

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BRAUN GmbH,

Plaintiff,

vs. Civil Action No. 03CV12428WGY

RAYOVAC CORPORATION,

Defendant.

Deposition of:  
ALAN SCHOEPP

Date: Thursday, May 12, 2005

Time: 9:00 o'clock a.m.

Reported by ELIZABETH J. KERNEN

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cleaner/charger 169  
41 - 2003 Business Review Men's Shavers 172  
42 - Tested Benchmark Concepts 180  
43 - Men's 2006 Shaving Recommendation dated  
September 29, 2004 189  
44 - Remington Men's Electric Shaver Concept Test  
prepared by Synovate dated September 2004 192

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DEPOSITION of ALAN SCHOEPP, a

witness of lawful age, taken on behalf of the plaintiff  
in the above-entitled cause, wherein Braun GmbH is the  
plaintiff and Rayovac Corporation is the defendant,  
pending in the United States District Court for the  
District of Massachusetts, pursuant to notice, before  
ELIZABETH J. KERNEN, a Notary Public in and for the State  
of Wisconsin, at the offices of Lathrop & Clark, LLP,  
Attorneys at Law, 740 Regent Street, Madison, Wisconsin,  
on May 12, 2005, commencing at 9:00 o'clock a.m.

A P P E A R A N C E S

LESLEY F. WOLF and DALILA ARGAEZ WENDLANDT,  
ROPES & GRAY, LLP, Attorneys at Law,  
One International Place,  
Boston, Massachusetts, appearing on behalf  
of the plaintiff;

KEVIN S. UELAND,  
KIRKLAND & ELLIS, LLP, Attorneys at Law,  
200 East Randolph, Chicago, Illinois,  
appearing on behalf of the defendant.

ALAN SCHOEPP,

called as a witness, after being first  
duly sworn in the above cause, testified  
under oath as follows:

**EXHIBIT G**

(Exhibit 21 is marked for identification)

EXAMINATION

BY MS. WOLF:

Q Good morning.

A Good morning.

Q We met previously, but my name is Lesley Wolf, and with me is my colleague Dalila Wendlandt. Just for the record, could you state your name.

A Alan Schoepp.

Q And could you spell that also, please.

A A-l-a-n, S-c-h-o-e-p-p.

Q Are you aware that you're here today pursuant to a notice of deposition?

A Yes.

Q I'm going to show you what's been marked Exhibit 21, and just take a moment and take a look at that.

(Witness examining document)

MR. UELAND: It's not a big deal with this document, but do you have copies for me?

MS. WOLF: I do. Sorry.

MR. UELAND: No problem.

Q Have you seen this document before?

A Yes, I have seen a copy of this document.

Q If you could just look on page 5 and review the

numbered paragraphs two through five.

A Yes.

Q Are you aware that you have been designated by Rayovac on those topics as the person most knowledgeable?

A Numbers two through five?

Q Yes.

A Yes.

Q And therefore you understand that you're here not only to testify about your own personal knowledge but on behalf of the Rayovac Corporation?

A Yes.

Q Can you tell me what you did to prepare for today's deposition.

A I had discussions with Tom Parker, our inside legal person, pulled documentation out relative to financials of the accused SKUs, worked with Jim Doyle to ensure I had the complete list of SKUs and spent some time discussing documents with Kevin.

Q Actually, when did you meet with Kevin?

A Yesterday.

Q And for approximately how long?

A I don't know, four hours, five hours.

Q And did you review any documents with Kevin at that time to refresh your recollection?

A We did.

Q Do you recall any specifically which you reviewed?

A Yes.

Q What were those documents that you recall?

A Documents such as the financials I had pulled previously that were requested.

MR. UELAND: All the documents that

Mr. Schoepp and I reviewed yesterday were produced in this litigation.

Q And you mentioned you had previously pulled those.

Was that at the request of your attorneys for production?

A Correct, Tom Parker.

Q And were those your own copies or copies that Kevin had brought with him yesterday of those documents?

A Kevin's copies.

Q Had you at any point reviewed transcripts of any of the other depositions that have been taken in this matter?

A No.

Q Now, we're just going to go through your background a little bit, if you could just tell me your educational history starting with college.

A Okay. I went to the UW-Oshkosh right after high school for two to three years, transferred back to UW-Madison to finish up my degree.

Q And what was your degree in?

A Accounting.

Q And after you finished at UW-Madison did you get any further degrees?

A Yes, I sat for the CPA exam about a year after graduation, and to prepare for that I took a Becker CPA review course.

Q And when did you graduate approximately from University of Wisconsin?

A December 1991. I'm in progress right now working through the executive M.B.A. program at UW-Madison, but I have not completed the degree.

Q How far along are you?

A Halfway this weekend.

Q Congratulations.

A Thank you.

Q What was your first job after you finished college?

A My first professional job after college was working at Rayovac.

Q So you have been at Rayovac for 14 years?

A Going on 14 years, yes.

Q And what was your first position at Rayovac?

A Cost accountant.

Q And what were your responsibilities as a cost accountant?

9

1 A Working with some of our off-site locations, plants  
 2 not located in Madison but not big enough to have  
 3 their own accountant working with the management team  
 4 there to establish standard costs and do budget  
 5 analysis and things.  
 6 Q How long were you in that position?  
 7 A Just under two years, actually just over a year.  
 8 Q And then what was your next position?  
 9 A I transferred to our Portage facility to become the  
 10 plant controller.  
 11 Q And what was manufactured at that plant?  
 12 A Zinc air hearing aid batteries and at the time silver  
 13 watch cells.  
 14 Q And how long were you there?  
 15 A Just under two years.  
 16 Q And then what was your next job at Rayovac?  
 17 A Transferred back to headquarters as a business analyst  
 18 in the sales controller area.  
 19 Q And what does a business analyst do in the sales  
 20 controller end?  
 21 A Work with the sales force on customer deals, pricing  
 22 and customer programs as well as customer deductions  
 23 for things such as volume rebates.  
 24 Q Were you working on specific products at that point in  
 25 time?

10

1 A At that point in time we just had the Rayovac lines,  
 2 and I covered all product lines for the customers I  
 3 worked with.  
 4 Q And who were those customers?  
 5 A Throughout my tenure in that role I basically had all  
 6 of our North American -- or our U.S. retail firms,  
 7 retail customers at one point or another.  
 8 Q Who was the largest customer?  
 9 A Wal-Mart, K Mart, Target.  
 10 Q And how long did you serve in that role?  
 11 A While in that function I was in a couple of different  
 12 roles over a span of just under three years.  
 13 Q And what were those various roles?  
 14 A Business analyst and then promoted to senior business  
 15 analyst and while doing that responsibilities remained  
 16 similar, just scope changed.  
 17 Q And when you say scope changed, you just had more  
 18 responsibility?  
 19 A More customers, the larger customers. Naturally when  
 20 you start you would work with some of the smaller  
 21 customers with less responsibility.  
 22 Q And then from senior business analyst -- is that your  
 23 position today?  
 24 A No.  
 25 Q What is your current position?

11

1 A I'm the controller for North American marketing.  
 2 Q And how long have you been in that position?  
 3 A About a year.  
 4 Q So going back, you were a senior business analyst from  
 5 approximately 1996?  
 6 A 1994 to 1997.  
 7 Q So between 1997 and your current position, what was  
 8 your next position?  
 9 A My next position was a short stint as the cost  
 10 accounting manager, less than six months.  
 11 Q And what did you do in that position as the cost  
 12 accounting manager?  
 13 A Worked with various plant locations on the cost of our  
 14 products as well as budget analysis and standard  
 15 setting.  
 16 Q And then after you were the cost accountant manager?  
 17 A I worked on the SAP implementation team.  
 18 Q How long did that take to get in place?  
 19 A About a year and a half.  
 20 Q And from there?  
 21 A Went to Canada as the sales and marketing controller.  
 22 Q And were those new responsibilities or was it just a  
 23 similar responsibility to the business analyst work in  
 24 a different location?  
 25 A Similar function, slightly different responsibilities

12

1 naturally.  
 2 Q And were you still working with all Rayovac products  
 3 at that point in time?  
 4 A Correct, at that point in time Rayovac products, we  
 5 didn't have other products.  
 6 Q And how long were you in Canada in that position?  
 7 A Twenty-one months.  
 8 Q From there you came back to headquarters?  
 9 A Correct.  
 10 Q And when was that?  
 11 A April of 2001.  
 12 Q And what position did you assume when you returned?  
 13 A Manager of finance for North American marketing.  
 14 Q And what did you do in that role?  
 15 A Worked with the sales and marketing teams, primarily  
 16 the marketing teams.  
 17 Q And was that your position until you became the  
 18 controller for North American marketing?  
 19 A No.  
 20 Q One more?  
 21 A One more.  
 22 Q And what was that position?  
 23 A Operations controller.  
 24 Q And how did that differ from the manager of finance  
 25 position?

1 A The manager of finance position was working with the  
2 marketing teams. The operations controller was  
3 working with operations in terms of our manufacturing  
4 facilities, research and development at the time and  
5 supply chain.

6 Q And then you shifted back to be the -- I'm sorry, in  
7 that position as the operations controller, was it  
8 still just Rayovac products?

9 A It was just Rayovac products when I started into that  
10 position. While I was in that position we acquired  
11 Varta in Germany, and before I was through with that  
12 position we acquired Remington.

13 Q And did the scope of your job change with each  
14 successive acquisition or were your duties essentially  
15 the same?

16 A My duties were similar, but the scope broadened.

17 Q But you were responsible as the controller for all  
18 operations including Remington?

19 A Correct, for a limited time while we were in  
20 transition.

21 Q What period was that?

22 A We officially closed the deal in October 2003. I  
23 transitioned out of that role during the spring of  
24 2004, and during a large part of that time integration  
25 efforts were under way where Remington was largely

1 steering their own ship, if you will, run as an  
2 independent company. It was really near the end of my  
3 term where the two were actually brought together.

4 Q And was that part of your responsibility to help get  
5 the two together?

6 A Help facilitate, bring the two together, yes, but not  
7 complete it.

8 Q And has it been completed at this date?

9 A It has.

10 Q Were there significant differences in terms of the  
11 accounting and operations between Remington and  
12 Rayovac?

13 MR. UELAND: What do you mean by  
14 significant?

15 Q What did you view as the biggest challenges in your  
16 role in the integration, if there were?

17 A Just thinking back, the biggest challenges in my role,  
18 I guess clearly understanding how their operations  
19 worked and what we would need to do to make sure we  
20 didn't drop the ball per se. First and foremost  
21 throughout our transition our goal was to make sure  
22 customer satisfaction was not interrupted in any way,  
23 shape or form, so making sure we had a thorough  
24 understanding of their key business drivers and their  
25 key business processes was key and extremely difficult

1 to make sure we had a handle on.

2 Q And did part of that process entail some education  
3 about the Remington products themselves?

4 A I don't know what you mean by education.

5 Q Did you have to learn, for example, about shaving  
6 products?

7 A There wasn't formal training per se where we sat down  
8 and went to a half day seminar to learn about their  
9 products, if that's the question.

10 Q But in your day-to-day capacity you became familiar  
11 with Remington's products?

12 A Yes, but not at a detailed level of every benefit and  
13 feature of every model versus every other model.

14 Q Did you ever have any specific responsibility for what  
15 you described as the accused SKUs in this case?

16 A No, not specific -- I guess can you define what you  
17 mean by specific responsibility.

18 Q Was there ever a point where someone came to you about  
19 those groups of products and said, you know, we have  
20 to figure out the operations for putting together the  
21 Titanium Smart System?

22 A No, I was never directly involved in supporting those  
23 SKUs and running the programs that surround those  
24 SKUs.

25 Q Do you have any current responsibility for those

1 products?

2 A Such as?

3 Q Such as I guess marketing, cost analysis, revenue  
4 monitoring.

5 A Yes, as a North American controller I'm charged with  
6 working with the brand teams to understand  
7 profitability and our P&L on our product lines in  
8 North America, so naturally as these SKUs fall in  
9 line, fall in as part of that P&L, I have a  
10 responsibility to understand their profit levels no  
11 more so or no less so than other SKUs in the  
12 portfolio, though.

13 Q So you're not in a men's shaving group of any sort,  
14 it's a general Remington operation?

15 A Right, I'm responsible for all of North American  
16 marketing, Rayovac and Remington combined. I do work  
17 closer with the Remington teams, but not specifically  
18 men's shaving or women's shaving or grooming. Said  
19 differently to answer your question, I'm not dedicated  
20 solely to men's shaving.

21 Q When did you first become aware of the Titanium Smart  
22 System products?

23 A What do you mean by aware, in terms of the fact that  
24 we offer them for sale?

25 Q Yes.

1 A I don't recall the exact date.  
2 Q Approximately?  
3 A I know the rotary system came on board first and  
4 basically was launching as we acquired the company,  
5 and I would suspect that that would be in the latter  
6 part of 2003 when I became aware of that particular  
7 product.  
8 Q And then the foil system?  
9 A The foil system wasn't launched until a later point in  
10 time, and again I don't recall exactly when I would  
11 have become aware of the company's plans to launch  
12 that product. It would have been sometime between the  
13 fall of 2003 and when it actually launched.  
14 Q You started mentioning the various products that are  
15 at issue in this litigation. Could you identify --  
16 and previously you mentioned that you had looked at  
17 specific SKU numbers. Could you identify those  
18 products for me.  
19 A Yes, I'll identify them by model number rather than by  
20 the SKU. The model number is the R-9500 for the  
21 rotary cleaning system, the rotary Smart System, and  
22 the MS-5500 and the MS-5700 are the micro screen  
23 versions.  
24 Q Are those the only three products that fall within  
25 what you called the Smart Systems?

1 A Besides the accessories that would go along with it,  
2 yes.  
3 Q And those three models that you just mentioned, are  
4 those shaver number models?  
5 A Correct.  
6 Q And is it possible just to buy the 9500, R-9500 shaver  
7 separately?  
8 A No.  
9 Q So those are shavers that are specifically marketed  
10 with a cleaning system?  
11 A Yes.  
12 Q Are you aware or do you know when the rotary, the  
13 R-9500 was first sold in the United States?  
14 A Our sales history would indicate September of 2003 was  
15 first shipped from Remington to the customers, and  
16 that was prior to Rayovac's acquisition of the  
17 company.  
18 Q In order to make those products available for shipment  
19 in September of 2003, would orders have come in  
20 previously to that date?  
21 A Orders from?  
22 Q From customers.  
23 A Most likely, yes, but not being privy to their  
24 operation prior to our acquisition, I don't know how  
25 their order flow would have worked for sure.

1 Q Under the current regime, so to speak, under Rayovac's  
2 system, how far in advance do orders typically come  
3 in?  
4 A It depends, depends upon the time of year, it depends  
5 upon if it's a new SKU, if it's a SKU being ordered  
6 for turn, if it's a line extension, so there are  
7 various factors that can drive how far in advance an  
8 order may come in.  
9 Q For example, I understand that the holiday season is a  
10 peak time. If that were the time, for the holiday  
11 season, how far in advance generally?  
12 A I don't know that there is a specific rule of thumb.  
13 Traditionally you would tend to believe that for the  
14 holiday season it would be a little longer than a  
15 normal, say, turn order, but I'm not familiar with the  
16 exact pattern.  
17 Q You just identified something called a normal turn  
18 order. What is that?  
19 A With any goods in the course of business, once an item  
20 is in distribution, consumers will go to the store,  
21 buy it, the retailer will have some sort of inventory  
22 system that will give them an indication of when they  
23 need to reorder, so those are basically turn orders to  
24 replenish goods that are already listed and in stock.  
25 Q Is the R-9500 still being sold in the United States at

1 this time?  
2 A Yes.  
3 Q Could you just help me, Rayovac's, do you call it a  
4 fiscal year or financial year?  
5 A Fiscal year.  
6 Q Rayovac's fiscal year runs from what month to what  
7 month?  
8 A October through September.  
9 Q Has that always been the case?  
10 A No.  
11 Q When did you shift to that fiscal year model?  
12 A 1996, I'm guessing, but it's in the '95 to '97 range,  
13 and I'm pretty certain it's '96.  
14 Q At least since 2001 it's been in place?  
15 A Yes.  
16 Q And in terms of thinking about the years because this  
17 is something that always is hard for me personally, so  
18 fiscal year 2004 begins in October of 2003?  
19 A Correct.  
20 Q So quarter one of fiscal year 2004 would be October  
21 through December 2003?  
22 A Correct.  
23 Q And then January through March is quarter two?  
24 A In our fiscal year, yes.  
25 Q And April through June is quarter three then?



1 A Um-hum.  
 2 Q And obviously then July through September quarter  
 3 four?  
 4 A Correct.  
 5 Q In terms of monitoring sales volume in the  
 6 United States, how does Rayovac count sales?  
 7 A How does Rayovac count sales in our financial  
 8 statements?  
 9 Q If there is a difference between your financial  
 10 statements and other sort of accounting, start with  
 11 your financial statements.  
 12 A It's based upon our shipments to our customers.  
 13 Q So you recognize a sale at the point it leaves your  
 14 warehouse to a customer?  
 15 A Basically, yes, with normal allowances for bad debts  
 16 or return reserves.  
 17 Q But you don't have any sort of special return rates or  
 18 arrangements with specific customers that would change  
 19 that?  
 20 A Generally not. When we do those are handled on a  
 21 special case.  
 22 Q And how would those be accounted for if they were  
 23 handled on a special case?  
 24 A Depends upon the arrangement. Can you give some  
 25 examples of --

22  
 1 Q Well, you said that there may be some in a special  
 2 case. Has there been one related to the Titanium  
 3 Smart System products in the last year?  
 4 A I don't know if the Smart System products were  
 5 specifically included, but there have been some sales  
 6 deals where there has been special returns provisions  
 7 which require different accounting for those sales  
 8 because it's inappropriate to recognize full revenue  
 9 on shipment.  
 10 Q And why would there be some of those special sales  
 11 deals?  
 12 A For some customers that may be the way they require us  
 13 to do business. It may be their requirement. Either  
 14 you agree to these special deals, special returns  
 15 provisions or you're not going to be listed in our  
 16 store.  
 17 Q Can you tell me who any of these customers are who had  
 18 those requirements?  
 19 A Yes.  
 20 Q Who are they?  
 21 MR. UELAND: I mean just so you  
 22 know, there is a protective order in place.  
 23 Q Anything that you say is confidential and won't be  
 24 used outside of this litigation or publicly released.  
 25 A Okay. I was curious how it's applying to the case.

1 I'm struggling because obviously that's a bit of  
 2 confidential information. I know last fall we had a  
 3 program like that with Kohl's.  
 4 Q But you're not aware of whether or not the Titanium  
 5 Smart products were involved in that?  
 6 A I'm not aware of the specific SKUs in the arrangement.  
 7 Q Would you be able to find out if they were included?  
 8 A Yes.  
 9 Q Okay. If they were included, that would be reflected  
 10 somehow in the financial statements?  
 11 A Yes.  
 12 Q How would it show up? For example, if I wanted to  
 13 know how many units were sold, if Kohl's said we have  
 14 the right to return anything up to 50 percent of what  
 15 you ship, when you shipped 100 units to Kohl's, how  
 16 would you account for that on the statements?  
 17 A On our statements at a detail level, at a SKU level,  
 18 such as the information I pulled for purposes of this  
 19 deposition, each and every one of those sales would  
 20 show as a sale at a SKU level.  
 21 Separate and apart from that, we would either  
 22 look at the agreement with Kohl's for the terms of how  
 23 much the return will be and we will book a general  
 24 accrual to reserve for that to reduce sales and reduce  
 25 our profits. So during the times when those shipments

1 were made to Kohl's, they are recognized as shipments  
 2 at the SKU level and there is a general reserve for  
 3 that future return when and if it comes back.  
 4 At the time in the future when Kohl's has gotten  
 5 through the time frame that the return provision  
 6 covers, the sales team will work with the customer to  
 7 understand how much, if any, of the products they  
 8 would like to return, ensure appropriate return  
 9 authorization is granted and then they will share that  
 10 with Kohl's, Kohl's will return the product back to  
 11 our facilities, at which time the credit will be  
 12 generated at a SKU level in the system and the units  
 13 and the sales dollars will drop.  
 14 Q Now, you mentioned that this is how you count sales at  
 15 the financial statement level based upon shipments.  
 16 A Yes.  
 17 Q Is there another way you count sales somewhere?  
 18 A Not internal, but I wasn't sure if your question was  
 19 driving at consumer take-away.  
 20 Q What is consumer take-away?  
 21 A At the retail level?  
 22 Q Which means what -- yes, consumer take-away at the  
 23 retail level?  
 24 A Consumer take-away, the units that are sold, are  
 25 ultimately bought by consumers.

25

1 Q And those are tracked at Rayovac?

2 A Yes.

3 Q On a formal basis?

4 A I guess I struggle with that. At a formal basis in

5 terms of --

6 Q Is there a document somewhere that reflects consumer

7 take-away sales?

8 A Not that I'm aware of in terms of a document that we

9 would have that would be a summary of all consumer

10 take-away, no.

11 Q There wouldn't be a summary, but would there be a

12 document somewhere that said Wal-Mart in the month of

13 November we sold X number of units?

14 A We have access to that information.

15 Q And where does your access to that information come

16 from?

17 A In our -- what's the word I'm looking for. Our

18 Wal-Mart team has access to, just like any other

19 vendor that does business with Wal-Mart, their system

20 where you can access your company's inventory levels,

21 POS and so on.

22 Q And is that reported to somebody? The Wal-Mart team

23 is monitoring that internally?

24 A Certainly the Wal-Mart team would be monitoring that

25 internally, yes.

26

1 Q And would they report that to a manager?

2 A I'm not in the formal loop of that, so I don't know if

3 there is formal communication on that or not.

4 Q Who is in the formal loop on that?

5 A Our Wal-Mart team.

6 Q And who is part of the Wal-Mart team?

7 A I mean we have several individuals that work on the

8 account. I don't know --

9 Q Regardless, is there someone who, for example, the

10 Wal-Mart team, the K Mart team, the Kohl's team, is

11 there someone that all of those teams report to?

12 A No.

13 Q There is no centralized --

14 A From a sales standpoint they would report to our

15 executive vice president of North American sales.

16 Q And who is that?

17 A Phil Pellegrino.

18 Q But you personally haven't seen a document that says

19 or documents in your experience that say in any given

20 month this is how many units we sold to or customers

21 took away?

22 A Not of the cleaning systems, no.

23 Q I think the easiest way to think about this is

24 probably on a product-by-product basis.

25 (Exhibits 22 and 23 are marked for identification)

27

1 Q Turn your attention to what's been marked as

2 Exhibit 22. Is this a document that you have seen

3 before?

4 A It appears to be.

5 Q And what is this document?

6 A This looks like the information that I first pulled

7 when Tom requested, when Tom Parker requested that I

8 pull information for this deposition.

9 Q Does this document have a name, any sort of name?

10 A No.

11 Q Is this something that is pulled from the SAP system?

12 A Ultimately the source data is SAP.

13 Q You say ultimately. What is the source before?

14 A SAP is where we house our transactional level detail,

15 and it is the system that holds all of our

16 information. However, we do report that out through a

17 data warehouse type of environment. So to answer your

18 question very specifically, an individual does not

19 specifically need to be in SAP to access this

20 information.

21 Q If you could walk me through this document a little

22 bit, on the left-hand side it lists SKU numbers,

23 correct?

24 A Correct.

25 Q And those numbers reflect -- 80906 reflects the

28

1 Titanium Smart System, R-9500CS?

2 A Correct.

3 Q Which is what?

4 A That's the R-9500 Smart System cleaning system. The

5 80906 is just a SKU that we assign so the computer can

6 track unique inventory.

7 Q And just underneath that, the R-9500CS and then there

8 is some other letters next to it, what does that

9 indicate?

10 A SMCP would most likely stand for Sensormatic and

11 Checkpoint.

12 Q Which means?

13 A Those are electronic article surveillance source

14 tagging. They are the little things in the packages

15 that make the beepers go off when you walk out of the

16 store with something.

17 Q So those are not something that's sold?

18 A No.

19 Q Then just underneath that I see Titanium Smart System

20 R-9500CS/BONUS.

21 A That would probably be a different variation of a

22 SKU. Maybe there was a bonus offering of, I don't

23 know, a back by mail coupon that was attached to the

24 package or maybe there was a free bonus inside, maybe

25 there was a package of electric shaving conditioner

1 that was inside the package, would be some examples of  
2 why they might have a bonus.  
3 Q Then skipping down a few lines to 81856, the R-9500R  
4 RECON?  
5 A Yeah, those are factory reconditioned SKUs. They are  
6 a result of consumer returns. In order to be resold,  
7 they need to be reconditioned, and then they are sold  
8 as such. They're not sold as A goods.  
9 Q Who are they sold to as reconditioned goods?  
10 A They are not sold in our normal channel of  
11 distribution, but I don't recall the customer's name  
12 offhand. I don't know why it escapes me right now,  
13 but the bottom line is it's in the types of channels  
14 you would expect it to be in, the closeout channels.  
15 Q Then just getting down to the bottom number, 81923,  
16 the R-9500CS/SPCL?  
17 A I don't know exactly why we would have SPCL. I can't  
18 give you the acronym like SMCP or the fact that CDN  
19 stands for Canadian. I can tell you that at times our  
20 supply chain group will take and have to add  
21 characters to a SKU because maybe there is two in a  
22 case for this retailer but there is three in a case  
23 for that retailer, and if we don't give it a separate  
24 SKU and a slightly separate description, our computers  
25 and our people won't know which is which. But to the

30

1 general consumer, there would be very little  
2 difference between 80906 and an 81922. I mean more  
3 than likely it's a packaging variation of sorts.  
4 Maybe there is a special promotional offer or  
5 something included, but as a rule there is not -- it's  
6 the core SKU.  
7 Q So moving over to the next column, the year indicates  
8 that it's fiscal year '04, quarter one, October, so  
9 that's October 2003?  
10 A Correct.  
11 Q And do these numbers reflect the actual sales made in  
12 the month of October?  
13 A The actual shipments at a SKU level during our fiscal  
14 October.  
15 Q Does fiscal October differ from actual October?  
16 A Yes.  
17 Q How so?  
18 A We run on a fiscal year that starts October 1st, ends  
19 September 30th. Those are the only hard dates that  
20 fall wherever they fall during the week. The rest of  
21 our cutoffs we run on a four, four, five quarter, four  
22 weeks in the first month, four weeks in the second  
23 month, five weeks in the third month, with our  
24 official accounting cutoff on the Sunday of that  
25 fourth or fifth week. So these sales would have

1 definitely started on October 1, 2003, but I would  
2 have to have a financial calendar in front of me to  
3 tell you exactly when they ended.  
4 Q That first column, ILC B4 returns, can you tell me  
5 what that refers to?  
6 A ILC stands for invoice less cash and B4 returns is  
7 just that, it's before the customer overstocks or the  
8 consumer returns. It's basically gross sales.  
9 Q And you say basically. How does it differ from gross  
10 sales?  
11 A In our system with the Rayovac products we have what  
12 we call a list price, which is just a wholesale list  
13 that's published to the world. Our system actually  
14 carries that technically as gross sales, but it's not  
15 used anywhere in our organization in our reporting  
16 because it's not representative of what customers  
17 actually pay, and so invoice sales is what customers  
18 do pay and invoice sales less cash discounts gross  
19 sales because the cash discount is off invoice  
20 allowance.  
21 Q And accrued returns reflects what?  
22 A Accrued returns would reflect the returns that come  
23 back from customer overstocks and return goods that  
24 are consumer level returns, consumer buys a product,  
25 takes it home or is gifted a product and opens it up

1 and for whatever reason tries it out, isn't satisfied,  
2 maybe they didn't like the closeness, maybe they  
3 didn't like something about it, so ultimately they  
4 bring it back to the store opened up and the retailer  
5 gives them credit and the retailer collects those and  
6 returns back to us. Those are the two types of  
7 returns that are in there. They would show up on  
8 these statements as they are physically processed at a  
9 SKU level.  
10 Q And then ILC sales?  
11 A Just math, ILC before returns less accrued returns  
12 equals ILC sales.  
13 Q And in parentheses, EITF sales?  
14 A That is net sales as we would report basically at a  
15 SKU level, that's net sales as we would report in our  
16 financial statements, and the reason EITF is in there  
17 is from about two years ago the GAAP changed in the  
18 way companies recognize revenue and what they can and  
19 can't call net sales, and up until that point our  
20 company had a different definition, as many companies  
21 did, for net sales, so consequently we put the EITF  
22 acronym in there to help the users of the reports  
23 understand that was the new definition.  
24 Q And do you know what EITF stands for?  
25 A Emerging issues task force. It's part of the



33

1 Financial Accounting Standards Board.

2 Q And I'm sorry, you may have mentioned this, when did

3 GAAP change to this system?

4 A About two years ago, it's two to three years ago. I'm

5 trying to recall the exact date. It would have been

6 almost certainly during calendar year 2002, at some

7 point during calendar year 2002 when this went into

8 play, so two to three years ago, certainly before the

9 shipments in question.

10 Q Now, looking at this page, as of in fiscal October of

11 2004, then the 9500 cleaning system would have been

12 the only product of the relevant SKUs that was sold at

13 that time?

14 A Correct.

15 Q Now, looking at the sheet, would there be able to --

16 can you tell me how many products or how many units

17 were actually sold in the month of October?

18 A Not on this first page I cannot.

19 Q Is there another page in here that you could?

20 A No.

21 Q Is that somewhere that -- how would you go about

22 determining the number of units sold in fiscal

23 October?

24 THE WITNESS: Kevin --

25 MR. UELAND: Hold on a second. Can

34

1 we go off the record for a minute.

2 MS. WENDLANDT: Well, let's answer

3 the question unless you can't.

4 A I would use a similar reporting tool but pull the key

5 figure units, retail units.

6 Q So there is a way to generate this report that would

7 include the number of units?

8 A Yes.

9 Q Okay. And have you ever generated such a report?

10 A Yes.

11 Q And did you provide that to counsel?

12 A Yes.

13 Q When did you provide that to counsel?

14 A Last Friday.

15 Q Okay. On a monthly basis?

16 A That's what my question was about was those papers.

17 MR. UELAND: Let's go off for a

18 second.

19 (Discussion off the record)

20 MR. UELAND: We're going back on.

21 It's 10:54. I'm just noting that because at break

22 I found out that we do not have --

23 MS. WOLF: It's 9:54.

24 MR. UELAND: You're right, I'm

25 sorry, 9:54 a.m.

35

1 Q Okay. We were talking about this document just before

2 the break, and you had indicated that it didn't have

3 unit sales numbers on it, but in fact there was a

4 version that existed?

5 A Correct.

6 Q Has that document been produced to us in this

7 litigation?

8 MR. UELAND: Yes.

9 MS. WOLF: Are you aware, Kevin,

10 can you represent when it was produced to us?

11 MR. UELAND: It was produced to you

12 on Friday.

13 MS. WOLF: If you could provide a

14 Bates range for that at some point, that would be

15 helpful.

16 MR. UELAND: Put it in a letter.

17 MS. WOLF: It wasn't produced as an

18 individual document on Friday, though, was it?

19 MR. UELAND: We produced documents

20 on Friday. It was in there.

21 Q And why did you go back then and just do another

22 report with sales unit number?

23 A I was asked for more level of detail.

24 Q And in an initial run-through, why wouldn't you have

25 included the number of units sold?

36

1 A The initial request was geared as I believe towards

2 sales values, so the information that you see on the

3 sheet in front of you has the sales values and I

4 believe that's all. It has the gross sales value and

5 ultimately gets down to net sales.

6 Q The information requested, relevant information, as

7 you understood it, who asked you for particular

8 information?

9 A Tom Parker.

10 Q Just on this sheet that includes the product number or

11 unit number sold, is that another column, what would

12 that look like?

13 A That actually has the SKUs going across the top and

14 the line items to the P&L in a more traditional format

15 going down the left side of the page. Ordinarily if

16 you read a financial statement, company's 10K, for

17 example, the line items go down the side, such as

18 sales and cost of sales and so on and the cuts of the

19 data go across in the financial statement, for

20 example, years in this case, SKUs would go across and

21 the line items of our P&L go down.

22 Q But it contains simply this information with the

23 addition of unit numbers or is there more information

24 on that sheet?

25 A There is more information relative to our P&L.

1 Q Okay. And what additional information is on those  
2 sheets?  
3 A Cost of goods sold, there are many additional line  
4 items I guess getting from the top of the P&L to the  
5 bottom of the P&L, trade rebates would be shown,  
6 consumer offers, cost of goods sold, gross profit,  
7 customer expenses and customer contribution.  
8 Q But the units, for example, would be identified by  
9 unit, it would be discernible what the units at issue  
10 were or is there a special code or accounting used for  
11 that? For example, would it read, if you could direct  
12 your attention to Exhibit 23, would it look more like  
13 this form?  
14 A No, this form still has the P&L line items going  
15 across the page rather than down.  
16 Q But the retail units would be labeled in a similar  
17 fashion on the P&L?  
18 A Correct.  
19 Q And when you say retail units, that reflects what's  
20 been shipped to customers rather than consumer  
21 take-away?  
22 A Correct.  
23 Q Could you tell me approximately or exactly if you know  
24 the number of R-9500 units sold on a monthly basis?  
25 MR. UELAND: For every month that

1 they were sold?  
2 Q Let's start with October.  
3 MR. UELAND: Object to the question  
4 as unfair.  
5 MS. WOLF: Objection is noted.  
6 Q You can answer.  
7 MR. UELAND: If you can.  
8 A Utilizing the sheet in front of me, it says -- for  
9 which particular time frame are you looking for?  
10 Q For October 2004, as an example.  
11 A I do not know that information. I do not have that  
12 committed to my memory, and the information in front  
13 of me is in annual buckets, not monthly.  
14 Q Let's look at the top column on Exhibit 23. It refers  
15 to FY '03?  
16 A Correct.  
17 Q And most of our columns appear to be blank, but there  
18 are numbers in one column, correct?  
19 A Most of our rows?  
20 Q I'm sorry, rows, yes.  
21 A Yes.  
22 Q But it seems that there are some sales recorded for  
23 the R-9500CS, is that correct?  
24 A Yes.  
25 Q What does 492 next to that mean?

1 A That is a classification we use internal to Rayovac to  
2 stratify our products by different characteristics,  
3 brands and sub brands and so on, and the 492 would  
4 actually be technically the product hierarchy label  
5 used in SAP to track that data.  
6 Q Okay.  
7 A The 492 has nothing to do with the outside world.  
8 Q And going across here, the last column reflects retail  
9 units, correct?  
10 A Correct.  
11 Q While it's done on an annual basis, the R-9500 you  
12 said was not sold you said until September 2003?  
13 A Correct.  
14 Q So therefore that would have been the only -- is that  
15 correct that then that would have been the only month  
16 it was available?  
17 A In fiscal 2003?  
18 Q Yes.  
19 A Yes.  
20 Q So would it be fair to conclude that there were 3,312  
21 R-9500s sold in September 2003?  
22 A From Remington to their customers, yes.  
23 Q If any of those units were subsequently returned, that  
24 would show up later in the 2004, if you could go down  
25 there to that section, that bar?

1 A Correct, or 2005.  
2 Q How long do you permit customers to return?  
3 A I'm sorry, I don't understand the question.  
4 Q Well, if someone purchased a unit in September 2003,  
5 you said that it's possible it wouldn't be returned  
6 until 2005?  
7 A Because we physically don't serial number each and  
8 every one of our units, we don't know specifically  
9 when a return comes back, so if we take a return of a  
10 R-9500 this month, all we know is we sold it sometime  
11 before today. But being we don't have them serially  
12 numbered, identified with a serial number, it's  
13 virtually impossible to track exactly when that unit  
14 came from.  
15 Q Just going across the top here, what the various  
16 columns are labeled, I think on the other sheet we  
17 talked about what ILC B4 returns means. We talked  
18 about net EITF sales, the standard cost of I assume --  
19 it looks like it's cut off. What is that column?  
20 A Standard cost of goods sold.  
21 Q What does the standard cost of goods sold refer to?  
22 A That is our standard cost of our units times the  
23 number of units sold.  
24 Q What is included in -- actually, never mind. We'll  
25 come back to that later. Gross contribution, is that

1 what that next column is?  
 2 A On the top row, yes.  
 3 Q And what does gross contribution refer to?  
 4 A It's net sales less customer cost of sales.  
 5 Q And what is considered customer cost of sales, what  
 6 does that refer to?  
 7 A Both standard cost of goods sold and at times as you  
 8 see FY '04 other customer cost of sales.  
 9 Q And what are those other customer cost of sales?  
 10 A They could be a variety of items, such as temporary  
 11 displays, you know, the cardboard prepacks you bump  
 12 your carts into at Wal-Mart would be a good example of  
 13 those. Other examples might include certain consumer  
 14 promotional offers. GAAP requires them to be tracked  
 15 as a cost of sales.  
 16 Q And what kinds of promo offers?  
 17 A For example, if you were to give away a free item with  
 18 the sale, such as if we -- example I gave earlier was  
 19 if there was a sample of electric shave in there and  
 20 we pay, I don't know, 25 cents for it, that 25 cents  
 21 is not a promotional cost, it's actually a cost of  
 22 goods sold that would show up as part of our other  
 23 customer of cost sales.  
 24 Q The fact that there is no separate column for other  
 25 customer cost of sales for FY '03, does that mean that

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1 you don't understand, I'm happy to rephrase.  
 2 A Could you please rephrase.  
 3 Q Sure. This top column reflects, as we established,  
 4 sales made in the month of September 2003, correct?  
 5 A Correct.  
 6 Q You also said that the Rayovac purchase or merger of  
 7 Remington became final on October 1st, 2003?  
 8 A Correct.  
 9 Q So at the time these sales were originally made,  
 10 Remington was still a separate company, correct?  
 11 A Correct.  
 12 Q And then at the point that the sale became final, you  
 13 received information on their sales, correct?  
 14 A At a point in the future, yes, between then and now.  
 15 We didn't on October 1st get a --  
 16 Q Understood, but this is something then that was  
 17 changed to reflect Rayovac's fiscal year and fiscal  
 18 cycle of accounting?  
 19 A That's correct.  
 20 Q Okay. I just wanted to understand that. Then at the  
 21 top there is one more column in fiscal year '03 that's  
 22 customer con. Is that customer contribution?  
 23 A That's correct.  
 24 Q And what is customer contribution?  
 25 A Customer contribution would be gross contribution less

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1 there were no such displays or promotions during that  
 2 time?  
 3 A During FY '03 this information comes from a  
 4 combination of systems because understand we bought  
 5 the company October 1 of 2003, so this is information  
 6 from the Remington system. Remington did not track  
 7 those types of expenses at a SKU level as we do in our  
 8 SAP system, so I can't answer your question as to  
 9 whether or not they may have had them at a SKU level,  
 10 but we're unable to track them at a SKU level.  
 11 Q We talked about what Rayovac's fiscal year was. What  
 12 was Remington's fiscal year?  
 13 A Calendar year.  
 14 Q So this top column is actually something that was  
 15 converted into the Rayovac system?  
 16 A What do you mean by --  
 17 Q I guess it's not done on a monthly basis, but at the  
 18 time that these sales were made, Remington was still a  
 19 separate company, is that correct?

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1 customer expenses.  
 2 Q And what are customer expenses?  
 3 A They would include items such as broker commissions  
 4 and customer freight out.  
 5 Q Broker commissions, what are those?  
 6 A Broker commissions are a fee you'll pay a rep, a  
 7 manufacturer's representative to sell your lines into  
 8 certain accounts. Some accounts require the most  
 9 efficient way to take your goods to market are through  
 10 a manufacturer's rep.  
 11 Q And manufacturer's reps, are those Rayovac employees?  
 12 A No, they are outside agencies. They might carry  
 13 several lines of generally noncompeting products, but  
 14 they will call on customers and be your main contact  
 15 with that customer. Some of them might be full  
 16 service and provide some sort of a service, but most  
 17 of them would be -- it's a commission in lieu of  
 18 having your primary contact be a Rayovac employee.  
 19 These rep groups are the primary contact and Rayovac's  
 20 face to that customer.  
 21 Q But does Rayovac also maintain a sales force?  
 22 A Yes.  
 23 Q And does that sales force interface directly with the  
 24 customer as well?  
 25 A Yes.

44

MR. UELAND: I think what the  
 witness is struggling with is what you're  
 referring to when you're saying these sales and  
 then this column.

MS. WOLF: Are you objecting?

Q If you understand the question, you can answer. If

1 Q How do the functions then of the manufacturing  
2 representative differ from the sales force?  
3 A With certain accounts there are no manufacturer's  
4 representatives. It's direct Rayovac employees  
5 calling on accounts. With other accounts it's a  
6 combination of the manufacturer's rep calling with our  
7 sales force, and some smaller accounts it may just be  
8 our manufacturer's rep calling on the account without  
9 a Rayovac salesperson present or representing the  
10 company.  
11 Q Okay. Your question at least to me indicated that  
12 there were three sort of categories, and you said the  
13 smaller customers, that often it's just a  
14 manufacturer's representative or at times there is.  
15 Are the larger accounts generally maintained by either  
16 sales representatives individually or the combination  
17 of sales reps and manufacturing reps?  
18 A Yes.  
19 Q Of the largest accounts, are those maintained by sales  
20 reps or are these manufacturing representatives?  
21 A Today I believe it's all direct sales reps.  
22 Q And who would you include in those largest accounts,  
23 what customers?  
24 A Actually, at retail Wal-Mart, K Mart, Target would be  
25 examples of those.

1 Q Directing your attention back to Exhibit 23, in fiscal  
2 year '04 it looks like we have some different column  
3 headings that weren't included above. ICL B4 returns  
4 is there, NSR Trade, is that returns, is that the --  
5 A NSR trade rebates.  
6 Q Which are what?  
7 A The NSR stands for net sales reductions.  
8 Q And what are trade rebates?  
9 A Examples of trade rebates would be things like volume  
10 rebates that customers earn as part of a program,  
11 co-op advertising allowances in most cases. Those  
12 would be some key examples. Ultimately they are funds  
13 that go to the trade.  
14 Q So those aren't customer rebates, for example?  
15 A They're not consumer rebates.  
16 Q And then net EITF sales we have talked about above.  
17 The standard cost of goods sold, we have talked about  
18 other customer you mentioned also before. Gross  
19 contribution is above. Customer E refers to what?  
20 A Customer expenses.  
21 Q And what are customer expenses?  
22 A It's what we had just spoken about above.  
23 Q Consumer and freight -- I'm sorry, you also had  
24 mentioned customer freight out. What does customer  
25 freight out refer to?

1 A As we ship our product to our customers, most  
2 arrangements include prepaid freight on our part, so  
3 we track that freight against the products and put  
4 that into our customer P&L and we do that at an  
5 estimated level.  
6 Q Now, it looks like for fiscal year 2004 in terms of  
7 the 9500CS going across that there were 188,076 units  
8 sold, is that correct?  
9 A That's correct.  
10 Q And 178,152 of those were 80906?  
11 A Correct, a core SKU.  
12 Q The core SKU is what's considered the most. Then the  
13 390, that's the almost 5,000 bonus, is it bonus  
14 offerings?  
15 A I don't know the exact SKU. 81390 you were asking  
16 about?  
17 Q Yes.  
18 A From document No. 22 that shows the R-9500CS/BONUS,  
19 correct.  
20 Q And 923 would be the specials?  
21 A The SPCL, which I would assume means special, but I  
22 don't know that for sure.  
23 Q So you don't know exactly what the difference is again  
24 between bonus and special?  
25 A No, I do not.

1 Q Now, underneath it says reconditioned 493. Those are  
2 also 9500s?  
3 A Most likely, yes, in fiscal '04 at least.  
4 Q The SKU is 81856?  
5 A Then yes, they are 9500s.  
6 Q And those are an additional 3,000 units?  
7 A That's correct, factory reconditioned 3,000 units,  
8 yes.  
9 Q And those reflect U.S. sales then?  
10 A The information on this document is for total  
11 North America, so it could include Canada.  
12 Q When you say could include Canada, how would we find  
13 out if it included Canada?  
14 A I would have to take another cut of the data to make  
15 sure it was exclusive to U.S., but worst-case  
16 scenario, this in fact should be a worst-case scenario  
17 for U.S. Naturally our sales are heavily slated to  
18 the U.S.  
19 Q So this other sheet also indicates it's North America  
20 sales. This also includes Canada?  
21 A Yes, the CDN SKU, for example, is unique to Canada,  
22 the 81043.  
23 Q Okay. So the CDN SKU is unique to Canada, but would  
24 the U.S., the ones without the CDN SKU, would those be  
25 U.S. sales or U.S. only sold in the United States?

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1 A Some of them would be unique to the U.S. However,  
2 some of them may be bilingual and be sold in both  
3 countries.

4 Q Have you ever just printed out these sheets or  
5 produced these sheets to counsel for just U.S. sales?

6 A Not that I'm aware of, no.

7 Q But would it be possible to do so?

8 A Yes.

9 MS. WOLF: We would request that  
10 that is done and produced to us.

11 MR. UELAND: Put it in a letter.

12 MS. WOLF: It's already been part  
13 of the document request, so we expect that that  
14 will be produced to us in advance of the expert  
15 deadline.

16 Q And then customer C, is that customer contribution  
17 that we talked about above?

18 A Correct.

19 Q And just remind me again what customer contribution  
20 is.

21 A Customer contribution would be net sales less customer  
22 cost of sales less customer expenses.

23 (Exhibit 24 is marked for identification)

24 Q Have you ever seen this document before?

25 A Not that I recall.

50

1 Q Is this a document that looks like it's something that  
2 would have been done by somebody at Rayovac?

3 A No, the date at the top says September '03.

4 Q If you look on the second page of it in the bottom  
5 corner there is a name, Bruce Adams. Do you know who  
6 Bruce Adams is?

7 A No.

8 Q So he's not someone at Rayovac as far as you know?

9 A As far as I know.

10 Q The first line, if we could look, it indicates that  
11 this is a forecast or the U.S. marketing forecast.  
12 Does Rayovac also create forecasts for products?

13 A I guess what do you mean by create forecasts for  
14 products?

15 Q Do you try to predict in any given year how many of  
16 each product that you anticipate will be sold to  
17 customers in a given month?

18 A Yes.

19 Q And what is the purpose of creating such forecasts?

20 A For inventory planning purposes.

21 Q And in doing that, the forecast numbers, what is the  
22 source of the forecast numbers generally?

23 A A combination of sales force, marketing and  
24 statistical monitoring input.

25 Q Is that partially based on past experience?

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1 A Yes.

2 Q Is it fair to say that the best indication of how many  
3 units you'll sell in November 2005 was how many units  
4 you sold in November 2004?

5 A No.

6 Q What would be the best indication?

7 A Although that's a starting point, there are many other  
8 factors that would go into it.

9 Q What other factors would go into it?

10 A Number of customers with the products listed, number  
11 of stores those customers have, number of facings  
12 within each store, number of other SKUs in the store,  
13 to name a few.

14 Q You mentioned that this is a collaborative process  
15 between the sales force and marketing and statistical  
16 model input. Is someone ultimately responsible for  
17 creating the forecasts?

18 A Creating what level of forecasts? I mean we have --

19 Q For inventory planning purposes.

20 A We have an inventory planning group, yes, and they  
21 ultimately own an inventory plan.

22 Q What other purposes other than inventory planning  
23 would you create forecasts?

24 A At a SKU level?

25 Q Yes.

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1 A That's the primary use for our forecasting process of  
2 total North America at a SKU level would be for  
3 inventory planning.

4 Q What about for sales planning?

5 A For total North America we do not rack up a forecast  
6 by SKU for sales planning.

7 Q And for marketing?

8 A Same thing.

9 Q After these forecasts are done, are you aware, does  
10 inventory planning then go back and ever look at how  
11 accurate they were?

12 A To my knowledge, they do in an effort for constant  
13 improvement, measure their accuracy and try to  
14 improve.

15 Q Generally how good are they?

16 A I don't know the answer to that.

17 Q Has there ever been a time that you are aware of where  
18 they have been extremely surprised by either the under  
19 performance or over performance of a product?

20 MR. UELAND: Objection, vague as to  
21 what you mean by extremely surprised.

22 Q You can answer.

23 A There has been times when their forecast was different  
24 from what we had -- the actuals were different from  
25 what we had forecasted certainly, and obviously at



1 times that came in at an unexpected rate.  
2 Q What was the unexpected or the discrepancy attributed  
3 to, what kinds of things?  
4 A Each situation might be unique.  
5 Q Of the situations you are aware of where that  
6 happened, what were some of the causes?  
7 A Projected consumer take-away was not what we had  
8 anticipated it would be, so consequently reorder sales  
9 were significantly less.  
10 Q So it wasn't that you under predicted sales, you over  
11 predicted?  
12 A You could cite examples of either situation depending  
13 upon the SKUs you're looking at.  
14 Q Do you know any particular time where consumer  
15 take-away was either significantly higher or lower  
16 than forecasts?  
17 A Relative to specific SKUs or --  
18 Q Relative to any of the Titanium Smart System  
19 products.  
20 A I'm not aware of any specific examples on the Smart  
21 System products where it was substantially ahead of or  
22 behind our forecast levels.  
23 Q Is there someone who might be aware if that had -- are  
24 you saying that it didn't occur?  
25 A No, I'm not saying that. In my normal course of

1 business I'm not involved at a SKU level comparing  
2 forecast to actuals.  
3 Q Is there someone in the inventory planning group who  
4 would know that?  
5 A Yes.  
6 Q And who is that?  
7 A Sandy Kasdorff.  
8 (Exhibit 25 is marked for identification)  
9 Q If you could turn to a page that is Bates numbered  
10 R13796.  
11 A Is this the page? (Indicating)  
12 Q You'll see it is "New Products: R-9400" across the  
13 top.  
14 MR. UELAND: I think the witness  
15 should just have some time to review the document.  
16 MS. WOLF: The witness asked a  
17 question if he was at the right page. I'm happy  
18 to give him time.  
19 MR. UELAND: No, I understand.  
20 MS. WOLF: At this point I'm only  
21 asking him a question about this particular page.  
22 MR. UELAND: I'm saying it's one  
23 page stuck among many. I feel he should have the  
24 time to review it.  
25 MS. WOLF: If he wants time to

1 review it, he can ask. I'm more than happy to  
2 give it to him.  
3 Q Have you seen this document before, this document as a  
4 whole before?  
5 A Yes.  
6 Q And would you have seen it -- it's dated September  
7 2004. Is that about the time you would have seen it?  
8 A Probably, yes, maybe not this specific document, you  
9 can appreciate as the building needs, there might be  
10 various versions of them, right, and revisions.  
11 Q And directing your attention to the page, the number I  
12 have given you, the new products R-9400, have you seen  
13 this page before or something like it?  
14 A I have seen new product introduction pages quite  
15 often. I don't specifically recall this page from  
16 another.  
17 Q And you'll see on the bottom right-hand corner of the  
18 page it indicates a launch date of April 2005. Did  
19 that product in fact launch in April 2005?  
20 A No.  
21 Q Has it launched at any point in time?  
22 A No.  
23 Q So the R-9400 is not currently being sold?  
24 A Correct.  
25 Q And why not?

1 MR. UELAND: Object to the question  
2 as outside the scope of this deposition.  
3 Q You can answer.  
4 A As we looked at the SKU, we just decided that it  
5 wasn't an appropriate addition to our line.  
6 Q So there is currently not an intention of selling the  
7 product?  
8 MR. UELAND: Same objection.  
9 A To my knowledge, no.  
10 Q Were you involved in the decision not to introduce the  
11 SKU?  
12 MR. UELAND: Same objection.  
13 A Not directly.  
14 Q Were you involved indirectly?  
15 A Analyzing sales.  
16 Q And what kind of sales did you analyze?  
17 A Looking at the sales of our rotary shaving products.  
18 Q And who asked you to indirectly participate in this  
19 decision?  
20 A The marketing management, marketing brand management.  
21 Q Was there someone in particular?  
22 A Sean Martin.  
23 Q And when you reported back to Mr. Martin, what did you  
24 tell him based upon your analysis?  
25 A I just gathered information regarding unit sales and

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1 profitability of some existing SKUs for his  
2 evaluation.  
3 Q So you didn't present any conclusions to him, you just  
4 gave him raw data?  
5 A Correct.  
6 Q We have the R-9500 is the rotary shaver marketed with  
7 a cleaning system. Are there any other products that  
8 work with what we understand is called CCS1, cleaning  
9 center one?  
10 A CCS1 is a term I'm not familiar with.  
11 Q Are there any other rotary products sold by Rayovac  
12 with a cleaning center?  
13 A No.  
14 Q Is there a shaver called an R-9700 that you are aware  
15 of?  
16 A No, not that I'm aware of.  
17 Q How about an R-9100?  
18 A I'm trying to recall if we have a 9100. I know we  
19 have a 910. I don't specifically recall if we have a  
20 9100 off the top of my head.  
21 Q And is a 9170 just a shaver not sold with a cleaning  
22 system?  
23 A That's correct.  
24 Q Is the 9500 considered a higher end shaver over the  
25 9170?

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1 A Yes.  
2 Q Are there others, are there other simple rotary  
3 shavers that are sold?  
4 A Besides those two models?  
5 Q Yes.  
6 A Yes.  
7 Q Are any of those -- is there any plan to sell any of  
8 those with a cleaning center?  
9 A Not that I'm aware of.  
10 Q Would you be involved in making that decision?  
11 A At some point I would be involved in the analysis most  
12 likely.  
13 Q Who would initiate that decision making?  
14 A The brand team, the marketing brand management.  
15 Q And that's Sean Martin who we just talked about?  
16 A Yes, he is in charge of men's shaving for the  
17 marketing perspective.  
18 Q So there are no current plans to release any  
19 additional rotary shavers with a cleaning system?  
20 A Not that I'm aware of.  
21 MR. UELAND: Objection, asked and  
22 answered.  
23 Q Are there any foil shaving systems sold with a  
24 cleaning system?  
25 A Yes.

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1 Q And what products are those?  
2 A The ones we spoke of earlier.  
3 Q So that's the MS-550 and the MS-5700?  
4 A No, MS-5500.  
5 Q 5500, I'm sorry.  
6 A And the MS-5700.  
7 Q With regard to the MS-5500, are you aware when the  
8 product was first sold in the United States?  
9 A The MS --  
10 Q 5500.  
11 A I believe that was sold during Q4 of fiscal '04.  
12 Q You can look at Exhibit 22. Would that help you?  
13 (Witness examining document)  
14 A Correct, fiscal Q4 of fiscal '04.  
15 Q And in what month was that?  
16 A August.  
17 Q So the MS-5500CSSMCP, what do those other -- what do  
18 those letters attached to the 5500 number indicate?  
19 A I believe I answered that previously.  
20 Q So it means the same thing as on the 5900?  
21 A Correct.  
22 Q And that would be -- can you remind me what it is.  
23 A The SMCP would be Sensormatic and Checkpoint.  
24 Q Do you have any idea why the -- there is no separate  
25 just number listed for the product on the 5500, but

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1 there is on the 9500. Are you aware of why there is  
2 that distinction?  
3 A Yes.  
4 Q And what is that?  
5 A Remington employed a philosophy of separate SKUs, some  
6 with source tagging and some without. At least  
7 initially, shortly after we acquired the company, we  
8 moved in the direction of a single SKU with both tags,  
9 so therefore there is not a separate SKU that is not  
10 tagged.  
11 Q And the unit sales for these products would also be  
12 included on the additional sheet that was produced to  
13 us last Friday?  
14 A Yes.  
15 Q And again that would include Canadian sales, however,  
16 that sheet?  
17 A Yes.  
18 MS. WOLF: Again we would ask for  
19 U.S. sales figures separating out the Canadian.  
20 Q And then the second foil product that you mentioned is  
21 the MS-5700?  
22 A Yes.  
23 Q And do you know when that was first sold in the  
24 United States?  
25 A It appears during Q1 of fiscal '05.

1 Q In October?  
2 A Correct.  
3 Q How is the 5500 different from the 5700?  
4 A The 5500 has LEDs to indicate the battery life. The  
5 5700 has an LCD panel to indicate the battery life.  
6 Q And that's the only difference?  
7 A To my knowledge, yes.  
8 Q Is it standard to introduce a separate product just  
9 based on that single distinction?  
10 A We have done it in the past.  
11 Q I guess for someone who doesn't know, what's the  
12 difference between them that would be meaningful  
13 enough to require the creation of a separate product?  
14 A Ultimately that's in the consumer's eyes, what  
15 features and benefits they would like to have in a  
16 shaver.  
17 Q So one is not generally considered superior, it's just  
18 a matter of consumer preference?  
19 A The LCD panel is considered superior to the LEDs.  
20 Q And is the 5700 therefore priced higher than the 5500?  
21 A Yes.  
22 Q Do you know roughly how much higher?  
23 A I believe the retail is approximately \$20.  
24 Q And the 5700 is still being sold in the United States?  
25 A Yes.

1 Q Again, the sales volume per unit is included on the  
2 additional sheet?  
3 A Yes.  
4 Q There is on the sheet listed an 81705 SKU, I'm sorry,  
5 on Exhibit 22 that says MS-5700NEW?  
6 A Um-hum.  
7 Q What does that mean, new?  
8 A Again it would be a tag that someone in supply chain  
9 added to a SKU so that they and the computer system  
10 could differentiate it. I'm not familiar with the  
11 exact specific differentiating feature, if it's  
12 something like a case count difference, if it's  
13 something like a larger package. There could be a  
14 variety of different reasons why that SKU would be  
15 labeled as new.  
16 Q If you can direct your attention to page R 004950,  
17 looks like the only entry on any of these pages is in  
18 accrued returns on the new?  
19 A R 004950 -  
20 Q It's December 2004.  
21 A Okay. I'm on that page.  
22 Q Do you know why there would be a return without any  
23 sales recorded?  
24 A On the 81705?  
25 Q Yes.

1 A Our returns, depending upon what -- many of our  
2 returns are keyed into the system as an order, and so  
3 very quite possibly what happened is the customer  
4 service rep went into the system and chose the wrong  
5 part number, searched for MS-5700, found SKU 81705,  
6 typed that in as the SKU, because it's active, the  
7 system will process a return against it, so basically  
8 it's just human error on typing the SKU on the return.  
9 Q Looking at Exhibit 23, is it correct that it doesn't  
10 appear that any 81705s have been sold?  
11 A Exhibit 23, I'm looking for that SKU on this page.  
12 (Witness examining document)  
13 A I believe that is correct.  
14 Q But you don't know why a separate SKU was created,  
15 it's not a new product?  
16 A I do not know why a separate SKU was created in this  
17 case, no.  
18 Q Are you aware of any other products sold in the  
19 United States that are the foil system with a cleaning  
20 center other than the 5500 and the 5700?  
21 A By Rayovac/Remington?  
22 Q Yes. Sorry.  
23 A No, again, aside from accessory type items, new foils  
24 and/or cleaning solution, but in terms of entire  
25 systems, no.

1 Q And do you know if there is any plan to introduce any  
2 new foil systems?  
3 A Foil systems --  
4 Q Foil systems with the cleaning center.  
5 A No, I'm not aware of any plans to launch new foil  
6 systems.  
7 (Exhibit 26 is marked for identification)  
8 Q Just take a minute and look at that.  
9 (Witness examining document)  
10 MR. UELAND: Lesley, I have two and  
11 one of them is Bates numbered a little bit  
12 differently. Which one should I have?  
13 MS. WOLF: Let's make sure we have  
14 the right one. 2456.  
15 MR. UELAND: Okay. I can give this  
16 one back to you.  
17 MS. WOLF: Actually, I take that  
18 back. I labeled the wrong one. We'll do this as  
19 26 and we can do that one as 27. The only  
20 difference between the two is the number and there  
21 is just a note at the bottom.  
22 (Exhibit 27 is marked for identification)  
23 Q You can take a minute and just make sure it's the same  
24 thing. They are different periods.  
25 MR. UELAND: So you're representing

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1 that these are the same numbers in here?  
2 Q Let's just look at 27 for now, setting aside  
3 Exhibit 26. Do you recognize the writing on that  
4 page?  
5 A This writing? (Indicating)  
6 Q Yes.  
7 A No.  
8 Q And I think you told me who Sean Martin is. He is the  
9 director of business?  
10 A Brand manager for shaving.  
11 Q For men's shaving or all shaving?  
12 A As of today, all shaving.  
13 Q Is that something that changed recently?  
14 A Depends on what you define as recently. Within the  
15 last year it has changed. Initially Sean didn't have  
16 all of shaving.  
17 Q The source of the forecast numbers on there we have  
18 already talked about generally, how forecasts are  
19 made. Would this be a document that you would have  
20 seen before?  
21 A No.  
22 Q Along the left-hand side you'll notice that there are  
23 certain labels, best, better, good and OPP. Can you  
24 explain to me what those labels mean.  
25 A Those are categories of the shavers that we group them

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1 into, so a good, better, best offering.  
2 Q OPP means offering?  
3 A Opening price point.  
4 Q So the opening price point, those are generally  
5 products that are introduced at the low end, that's  
6 considered the low end of the market then?  
7 A Correct.  
8 Q So the R-9500 is considered a best, top of the line?  
9 A Correct.  
10 Q On the right-hand side there is something called the  
11 R-9400. Is that just a shaver?  
12 A Isn't that the shaver we discussed from Exhibit 25?  
13 Q You're right, so that is obviously something that has  
14 not come to fruition?  
15 A Correct.  
16 Q And then look at the next page and the MS-5500 and the  
17 MS-5700 talked about. Those are both considered top  
18 of the line products?  
19 A Yes, based on feature offerings.  
20 Q And what are feature offerings?  
21 A Those are the primary differences between the  
22 different categories, the features that come with a  
23 shaver, corded, rechargeable, cordless, single foil,  
24 dual foil, triple foil, other features, on-off switch  
25 versus LED information versus LCD panel, pop-up foil

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1 versus just all fixed foils.  
2 Q Are you aware of what features are part of the 5500  
3 and 5700 that put them into the best category?  
4 A Again the good, better, best, the OPP good, better,  
5 best is about pricing categories, so pricing  
6 categories at consumer retail, and the MS-5500 and the  
7 MS-5700 are some of our most full-featured shavers,  
8 and so consequently they command the higher price  
9 point lying in our best category.  
10 Q I think I already asked this, but I just want to  
11 verify that Rayovac does not have any other forecasts  
12 for cleaner sales that you are aware of?  
13 A Any other forecasts --  
14 Q Because this is clearly labeled a forecast.  
15 A A unit forecast, that's correct.  
16 Q Again, you wouldn't participate in the making of these  
17 forecasts other than --  
18 A Not generally at a SKU level, no.  
19 Q When you say not at a SKU level, at what level would  
20 you participate in?  
21 A Our forecasting process is geared toward product lines  
22 as the lowest cut of data rather than SKU.  
23 Q And what would be the relevant product line for these?  
24 A Men's shaving.  
25 Q And your involvement is simply in men's shaving?

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1 A No.  
2 Q You're responsible for women's shaving as well?  
3 A Responsible for it from what perspective?  
4 Q In your daily tasks you're aware of and monitor the  
5 sales of the women's shavers?  
6 A I work with financial results from a variety of  
7 different product lines, including both men's and  
8 women's shavers.  
9 Q And what other products besides men's and women's  
10 shavers?  
11 A Grooming, personal care, alkaline, heavy-duty,  
12 rechargeables, hearing aid batteries, lights, lantern  
13 batteries, I'm trying to think, lithium, basically all  
14 of our product lines in one form or another, either  
15 myself directly or people that work for me.  
16 Q Are you aware that Rayovac now sells a women's shaver  
17 with a cleaning system?  
18 MR. UELAND: Objection, assumes  
19 facts not in evidence.  
20 Q You can answer.  
21 A We have plans to launch a women's shaver, yes, with a  
22 cleaning system.  
23 Q Has that product in fact been launched?  
24 A I don't know if we have made first shipments or not on  
25 that SKU, being that SKU is not part of the

1 information.

2 Q You mentioned actually that you had pulled up a number  
3 of SKUs. How did you identify which ones to pull up?

4 A I asked our marketing management to designate which  
5 SKUs this lawsuit would cover, which models it would  
6 cover, and then I went and found all of the SKUs  
7 associated with those models and pulled the  
8 information.

9 Q And when you went to marketing presumably, was your  
10 specific request what SKUs this lawsuit would cover or  
11 did you give them some sort of classification of  
12 product to work with?

13 A No, an E-mail came from Tom requesting information.

14 Q But if in fact the women's shaver had been launched  
15 and sold, which I'll represent to you it has, would  
16 you have access to the sales volume information in  
17 similar kinds of reporting fashion?

18 A Yes.

19 MS. WOLF: We would request  
20 production of that information as well pursuant  
21 to the document request.

22 Q I'm assuming based on the fact that you weren't aware  
23 the product had been sold that you haven't seen any  
24 sales numbers for the women's shaver?

25 A Correct.

1 Q Are you aware of any forecasts for the women's shaver  
2 with cleaner?

3 A Not at a specific SKU level in an aggregated fashion  
4 such as the information you have shown me here, no.

5 Q Just review, other than the 5500, the R-5500, the  
6 MS-5500 and the MS-5700, there are no other -- and the  
7 women's shaver, there are no other products being sold  
8 with the cleaning center currently?

9 A None that I'm aware of.

10 Q And that there are no other products that are planned  
11 to be sold with the cleaning center?

12 A None that I'm aware of.

13 Q And there is no current plan to release the 9400?

14 A No.

15 (Exhibit 28 is marked for identification)

16 Q Take a minute and just flip through this document.

17 (Witness examining document)

18 MR. UELAND: Is there a particular  
19 page you would like him to focus on?

20 Q Yes, look at 13426 and 13427.

21 MR. UELAND: And feel free to  
22 review as much of it as you want.

23 Q At the bottom column before you get to total there is  
24 something called CS. Does that refer to cleaning  
25 center products?

1 A I would guess it refers to cleaning system products.

2 Q So this is not something that you have ever seen  
3 before?

4 A I have seen this, just not concentrated at that level  
5 of detail.

6 Q What do you mean by not concentrated at that level of  
7 detail?

8 A I guess as I flip through these, I would look at that  
9 and say it's a natural progression, OPP, MS2, MS3,  
10 kind of along that good, better, best just kind of  
11 using a different set of labels associated with it,  
12 again, you know, kind of categorizing the shavers into  
13 categories consistent with their features and  
14 benefits...

15 Q I'm interested in, if you look at 13426, on the fiscal  
16 '04 YTD, which I assume means year to date?

17 A Um-hum.

18 Q For CS it lists two numbers, a gross dollar number of  
19 1.2, which probably needs some zeros added to get to  
20 an actual number, and then .4. Do you know what the  
21 source of those numbers are?

22 A Individuals that create reports like this have access  
23 to information such as that through a variety of  
24 systems we have set up at Rayovac, so I can't  
25 definitively tell you what it would be sitting here.

1 Q But the gross dollar figure you said that that  
2 would -- do you think that probably -- not probably,  
3 do you think that reflects the ILC returns, B4 returns  
4 that we talked about in common parlance?

5 A It certainly should.

6 Q And this document I believe is dated September 2004,  
7 so that is just before the close of fiscal year '03?

8 A Fiscal year '04.

9 Q Okay. If you look at the annual sales of cleaning  
10 center products for fiscal year '04, which is  
11 Exhibit 23, there seems to be a large difference in  
12 the numbers. Can you explain why there is a  
13 discrepancy?

14 A No, because there is no date, no specific date on this  
15 presentation, Exhibit No. 28. That F'04 year to date  
16 data could have been pulled anytime.

17 Q So you think it's possibly unconnected to the  
18 September 2004 date, the September 2004 date on the  
19 cover of the presentation?

20 A Not necessarily. It very well could have been early  
21 September of 2004.

22 Q But at that point would not most of the -- 11 months  
23 of the fiscal year would have passed, correct?

24 A That's correct.

25 Q So to get from 1.2 to what I see as 25, unless I'm



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1 looking --

2 A Where are you getting 25? Bear in mind this 13426 is  
3 only foil.

4 Q Is it possible that two million somehow came in at the  
5 end of the year or is it more likely that this is just  
6 the timing when this was generated?

7 MR. UELAND: Objection, compound.

8 What are you asking him?

9 A Yeah, I don't know.

10 Q My question is was there different data used to  
11 generate the annual sales, which is Exhibit 23, versus  
12 this report being made in the business review?

13 A The source data should have been exactly the same.  
14 Being that I did not create both documents, I cannot  
15 affirm that, but it should have been the same.

16 Q Thank you.

17 (Exhibit 29 is marked for identification)

18 Q Is this a document that you have ever seen before?

19 A No.

20 Q So am I correct then that you don't know which -- it  
21 just has months labeled August, September, October.  
22 Do you know what year?

23 A No, there is no indication anywhere what year.

24 Q And there is no way to tell what products this is  
25 referring to either?

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1 A Not that I'm aware of looking at this document. It  
2 could be on alkaline sales. I don't know.

3 Q And you have no idea why the information would be  
4 tracked in this sort of nonspecific way then?

5 A No. In the normal course of business you'll be asked  
6 for various ad hoc requests at times, and you'll pull  
7 the information and that will be that.

8 Q So you have never seen any other documents like this  
9 reflecting the cleaning center products?

10 A Not that I'm aware of where we have pulled out which  
11 customers and units.

12 Q Looking at the customers listed here, is this what you  
13 would consider a representative list of some of the  
14 major customers on the cleaning center products?

15 A It would appear so. However, these customers are also  
16 major customers on other products of ours as well, so  
17 being this is not directly labeled as cleaning system  
18 units, I have no bearing to tie this to cleaning  
19 systems.

20 Q Are there any other documents that you know of that  
21 you are aware of that track sales volume on a product  
22 basis?

23 A On a SKU level basis?

24 Q Yes.

25 A Only on ad hoc basis, nothing that I'm aware of that's

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1 done on a formal basis that is routinely updated from  
2 our system. Tracking, I'm just trying to think what  
3 people can access on a regular basis. I can't think  
4 of anything that's formally out there that  
5 communicates unit sales of specifically the cleaning  
6 systems.

7 Q Just going back to the last set of numbers that we  
8 were looking at and return to the shaving business  
9 review, recognizing --

10 A Exhibit 28?

11 Q Yes. Recognizing that this is undated so it's  
12 difficult to be precise, would you consider the annual  
13 sales numbers to be a more reliable source of  
14 information about sales, Exhibit 23 versus Exhibit 28,  
15 if one was interested in knowing the gross sales and  
16 gross profits?

17 A Yes.

18 Q So 23 would be a superior method for that?

19 A Yes.

20 Q You have faith in the confidence -- you are confident  
21 that 23 accurately reflects the annual sales?

22 A Correct.

23 Q Does Rayovac sell cleaning fluid refills for the  
24 cleaning center products?

25 A Yes.

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1 Q And do these products have a separate label or name?

2 A Separate SKU you mean?

3 Q Yes.

4 A Yes.

5 Q Do you happen to know what that is?

6 A The exact SKU number I do not. However, consistent  
7 with the model MS-5500, the so-called model number  
8 would be CC-100.

9 Q And do you know how cleaning fluid refills are  
10 packaged?

11 A Yes.

12 Q How are they packaged?

13 A A cardboard box.

14 Q Are they sold in a single bottle, one pack, two packs?

15 A Single bottle in a cardboard box.

16 Q Are you aware of how many of these are sold on a  
17 monthly basis?

18 A I have exposure to that, but I cannot quote that  
19 number sitting here.

20 Q Could you create a similar sort of output or  
21 spreadsheet that you have regarding the monthly sales  
22 for the cleaning fluid refills?

23 A I believe that was also part of last Friday's  
24 documents.

25 Q Do you know what the costs are of those sales -- or of

1 creating the product?  
2 A Not off the top of my head, no.  
3 Q Would that be documented somewhere in a similar  
4 fashion to the annual report or would you have access  
5 to that information?  
6 A Yes.  
7 Q Obviously since you're not aware of specifically what  
8 the costs are, you probably don't know what the  
9 specific profit is either?  
10 A Again, off the top of my head, no.  
11 Q But nonspecifically, are the refills considered a  
12 profitable product?  
13 A Yes, they generate positive contribution, as do most  
14 of our products or we wouldn't be in business.  
15 Q Relative to the costs, is it considered a high profit  
16 margin?  
17 A I have not specifically looked at the profitability of  
18 the refills. Just from a materiality standpoint of  
19 historically we have not had huge sales dollars there,  
20 so it hasn't been an area of heavy analysis.  
21 Q Have you seen any forecasts for refill sales?  
22 A No.  
23 MS. WOLF: Why don't we take a  
24 short break.  
25 MR. UELAND: It's 10 after 11.

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1 (A short recess is taken)  
2 MR. UELAND: Back on at 11:20.  
3 Q When was the R-9500 first manufactured?  
4 A I don't know that specific date.  
5 (Exhibit 30 is marked for identification)  
6 A Sections three through five talk about manufacturing  
7 dates.  
8 Q As part of topic three, manufacturing costs of the  
9 dates are relevant to that. If you look at page 2182,  
10 what is this document?  
11 A I don't know being that it's from prior to Rayovac  
12 owning Remington.  
13 Q For purposes of this litigation, Remington has merged  
14 into Rayovac, the parties agreed that essentially  
15 Rayovac would stand in Remington's shoes, if you could  
16 just take a minute and look at it and let me know if  
17 you can figure out what it is.  
18 A It would appear it's a ramp-up schedule to produce  
19 products.  
20 Q And the first date on that ramp-up schedule is?  
21 A The first date on this ramp-up schedule as per  
22 engineering time line, as the document says, is  
23 July 30th, 2003.  
24 Q And are ramp-up schedules generally adhered to?  
25 A I'm generally not involved with ramp-up schedules, so

1 I can't comment.  
2 Q Who is involved with ramp-up schedules?  
3 A Generally the purchasing area would be a primary  
4 driver of ensuring the ramp-up schedules are out there  
5 with the vendors.  
6 Q Just take a look back then. Would a July 2003 begin  
7 of manufacture be consistent with a first sale in  
8 September 2003?  
9 A It would appear reasonable.  
10 Q Going back to Exhibit 22, which number on this page,  
11 if any, would you say best represents the revenue  
12 generated by the sale of the 9500?  
13 MR. UELAND: What page?  
14 MS. WOLF: On the first page.  
15 A The revenue generated by the sale of the R-9500, the  
16 \$4,704,000.  
17 Q Before or after the returns?  
18 A The net EITF, so after returns.  
19 Q And that would be the same for each month and each of  
20 the products then, correct?  
21 A Correct.  
22 Q And looking at Exhibit 23 then, the same net EITF  
23 sales figure that appears there is on an annual basis,  
24 a calculation of revenue, correct?  
25 A Correct.

1 Q Other than these two documents, are you aware of --  
2 are there any other documents that report revenue for  
3 the cleaning center products?  
4 A Report revenue to who or to --  
5 Q Let's start internally, are there other documents used  
6 to report revenue?  
7 A Of just the cleaning system?  
8 Q Yes.  
9 A No.  
10 Q What about externally?  
11 A Not that I'm aware of.  
12 Q When you talk about manufacturing costs, what is  
13 included in manufacturing costs?  
14 MR. UELAND: For the products at  
15 issue, right?  
16 MS. WOLF: Yes.  
17 A The products at issue are not produced by our own  
18 owned facilities, so the standard cost or the cost  
19 that goes into the manufacturing cost of those are all  
20 purchase prices or we'll purchase a shaver and for the  
21 cleaning systems we'll purchase various components,  
22 such as the box and the cleaning solution and so on  
23 and we'll pay a contractor to assemble them.  
24 Additionally, we would include an appropriate amount  
25 to cover the duty and the freight associated with

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1 getting the goods to our site available for sale.  
 2 Q Are there documents showing these purchase prices?  
 3 A Certainly there would be POs to our vendors showing  
 4 f.o.b. pricing.  
 5 Q And who would have those documents?  
 6 A Those documents would reside in our SAP system in  
 7 electronic format.  
 8 Q And would they be tracked on some sort of SKU basis of  
 9 what product they were being ordered for?  
 10 A When you say tracked, you mean does someone do a -- I  
 11 guess I'm unclear what your question is.  
 12 Q For example, if you're ordering 1,000 shavers and 750  
 13 of them are for a cleaning center or are for the  
 14 R-9500, 250 of them are for somewhere else, could you  
 15 just type in purchase orders for and list the SKU  
 16 number for the 9500?  
 17 A I would imagine if you had the appropriate part  
 18 numbers or SKU numbers in SAP, you could pull a query  
 19 of the units ordered.  
 20 Q And where are the part numbers tracked?  
 21 A Part numbers are in SAP attached to a given SKU with a  
 22 description. Once the SKU is set up, it's set up in  
 23 SAP with a part number and that's forever. Its  
 24 archived.  
 25 Q And contractors, even if you pay contractors to

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1 assemble the products, would those also be tracked in  
 2 purchase orders?  
 3 A Most likely, yes.  
 4 Q And the duty and freight charges?  
 5 A Duty and freight charges, freight charges are based on  
 6 an estimate of the freight. As you can appreciate, we  
 7 would ship a mix of goods at any given point in time,  
 8 so it would be nearly impossible to individually  
 9 assign the exact freight cost to every individual  
 10 SKU. The duty costs are a function of the HTS  
 11 classification with the U.S. customs, and you look up  
 12 the classification of the product in the chart and the  
 13 country of origin and it says a duty rate, and so  
 14 consequently we accrue that duty rate into the cost of  
 15 the goods as we pay for them.  
 16 Q Do you know who makes the shaver for the 9500?  
 17 A I believe the vendor is Izumi.  
 18 Q And for the MS-5500 and 5700?  
 19 A I'm not certain of our vendor name on that one.  
 20 Q Is it Izumi?  
 21 A It may be, but I don't believe it is. I believe it's  
 22 an alternative vendor.  
 23 Q Do you happen to know who makes the box?  
 24 A I do not.  
 25 Q Do you know who would?

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1 A What's that?  
 2 Q Would that be also tracked in those purchase orders?  
 3 A Correct.  
 4 Q And the cleaning solution?  
 5 A Again, I know that's done stateside because of the  
 6 flammability of it and the shipping associated with  
 7 it, so that is done in the States, but I do not know  
 8 our vendor name.  
 9 Q On Exhibit 23 are manufacturing costs included in one  
 10 of those categories?  
 11 A Yes.  
 12 Q Which category?  
 13 A Standard cost of goods sold.  
 14 Q But that's not simply manufacturing expenses, correct?  
 15 A The discussion that we went through before of what's  
 16 included in manufacturing costs is basically the  
 17 components of the standard cost.  
 18 Q What about distribution costs?  
 19 A Outbound distribution?  
 20 Q What do you mean, outbound distribution from Rayovac  
 21 to customers, is that --  
 22 A I guess I'm trying -- distribution costs --  
 23 Q Distribution costs from Rayovac to Rayovac's  
 24 customers.  
 25 A Okay. Outbound freight from Rayovac to our customers

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1 is not part of standard cost or part of our  
 2 manufacturing cost. It's inappropriate with GAAP.  
 3 Q So where is that tracked?  
 4 A It's part of customer expenses. Earlier we were  
 5 discussing broker commissions, and at the same time I  
 6 believe we discussed distributor customer or freight.  
 7 Q What about the salaries of sales and marketing people,  
 8 are they included in distribution costs or  
 9 manufacturing costs?  
 10 A No.  
 11 Q Are those ever allocated on a product category basis?  
 12 A Salaries of individuals? No, and certainly not at a  
 13 SKU, but even -- no.  
 14 Q What were the research and development costs  
 15 associated with the development of the R-9500?  
 16 MR. UELAND: Object, it's outside  
 17 the scope of the topics this witness has been  
 18 designated for.  
 19 MS. WENDLANDT: You can answer the  
 20 question.  
 21 MR. UELAND: I'm going to instruct  
 22 him not to answer.  
 23 MS. WOLF: On what basis?  
 24 MR. UELAND: It's outside the  
 25 scope.

MS. WOLF: The scope of topic three includes revenue, manufacturing costs, distribution costs, profitability. To the extent research and development are costs, the witness should have been prepared and should be ready to answer. If he can't answer, he can say that.

MR. UELAND: I don't believe that it falls within the category.

Q Do you know the research and development costs?

A I do not know.

Q Do you know who would be aware of the research and development costs?

A I don't know that we separately track research and development costs at an individual project or SKU level such as this. There is nowhere in our system I would be aware where anyone would be able to pull that information.

Q Even in engineering?

A Again, in our system, no.

Q But the budgeting allocation must come from some source, correct?

A Budgeting allocation?

Q If someone in engineering wants to develop a new product, presumably they need funds to do so, correct?

A Correct.

Q And which option did Rayovac choose to use?

A I don't know.

Q Would that be Yuri again who would know that?

A Yuri or potentially Sean. Like in the first option talks about the colors of the carton, certainly we wouldn't ask Yuri to make that decision.

Q Under option two there is something that says still waiting for Greg to develop. Do you know who Greg is?

A No.

Q So the figure for standard cost of goods sold, that would be what you would call manufacturing costs?

A Correct.

Q And could you generate a report on a monthly basis again and quarterly basis that would reflect those costs on a monthly and quarterly basis as opposed to an annual basis?

A What did you want produced in that report?

Q The standard cost of goods sold.

A That's included in the documents that were sent last Friday.

Q That's included. Okay. And the distribution costs, which you said were the customer expenses, is that correct?

A They are part of customer expenses tracked on a SKU level.

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Q They would make a request somehow?

A Our system is not set up to micror manage our men's shaving engineers to track when they're working on feature A versus feature B. Our engineers are on board to develop the best consumer products we can and the level of granularity would be at a men's shaver level, not down at a specific SKU level in terms of tracking our research and development costs.

Q But there is a research and development budget for men's shaving?

A Correct.

Q And who would have access to that budget?

A In terms of in the system?

Q Who would be able to know what the research and development budget for men's shaving was in any given year?

A I'm trying to think. The best individual related to men's shaving, I would guess the person would be Yuri Avili.

Q If you could flip back to Exhibit 30, the first page, document Bates numbered R 002178, what is this document?

A This document appears to be an estimated cost of an R-9500 shaver and CCS1 cleaning unit cost, as it says on the top, looking at various different options.

Q You said they are part of customer expenses. What else goes into customer expenses that you wouldn't consider distribution costs?

MR. UELAND: Objection, asked and answered. We talked about this at length this morning.

Q Answer the question.

A Broker commissions would be included in that. That would be the largest factor.

Q So you would exclude broker commissions from distribution costs?

A Correct. The documents I submitted on Friday split those out, show distribution separate from broker commissions, and to the degree there is merchandiser costs there, but those are rarely, if ever, tracked at a SKU basis.

Q And then the gross profits of the products would match up with which column?

A The gross contribution is listed.

Q And again the document you gave us on Friday also breaks that out on a monthly and quarterly basis?

A Yes.

Q And then just to be clear, what comes out from gross contribution to get to net profit?

A Between gross contribution and customer contribution

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1 are customer expenses.  
 2 Q And you consider customer contribution to be the net  
 3 profit then?  
 4 A It's the lowest level at which we track SKU  
 5 profitability.  
 6 Q And the document you provided on Friday includes that  
 7 at a monthly and quarterly level as well?  
 8 A Yes.  
 9 Q Is there a marketing budget for the cleaning center  
 10 products?  
 11 A We do not track a marketing budget specifically for  
 12 cleaning systems.  
 13 Q Which marketing budget would they fall within?  
 14 A Men's shaving.  
 15 Q Is that the same for advertising budget as well?  
 16 A That's correct.  
 17 Q But there is no specific allocation beyond the men's  
 18 shaving grouping of those products?  
 19 A No specific allocation of?  
 20 Q Of the budget for marketing or advertising.  
 21 A No, we don't track it in our system, no.  
 22 Q Have there been any print ads for the cleaning center  
 23 products?  
 24 A Not that I'm aware of.  
 25 Q What about television ads for the cleaning center

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1 products?  
 2 A There were television ads in which we advertised the  
 3 products that included a cleaning system, yes.  
 4 Q Was that specific to the R-9500 or was it all?  
 5 A There was a television ad that included the R-9500 in  
 6 it.  
 7 Q What else did it include?  
 8 A That was the only product that was shown in that  
 9 particular advertisement, but the advertisement was  
 10 not specific to cleaning systems per se.  
 11 Q And the funds that paid for that television commercial  
 12 came out of a general men's shaving advertising  
 13 budget?  
 14 A Yes.  
 15 Q Are there any people within marketing who are focused  
 16 on marketing and selling the cleaning center products?  
 17 A Exclusively?  
 18 Q Start with exclusively, yes.  
 19 A No.  
 20 Q Are there people who while not exclusively focused on  
 21 it are specialists, so to speak, in the cleaning  
 22 center area?  
 23 MR. UELAND: Objection, vague as to  
 24 what you mean by specialist.  
 25 A No, our brand managers carry the whole line. We don't

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1 have an individual over there in our marketing area  
 2 that's a cleaning systems specialist.  
 3 Q So everyone who is a brand manager for men's shaving  
 4 markets the cleaning center product as part of their  
 5 responsibilities?  
 6 A As part of their responsibilities along with all other  
 7 men's shaving products.  
 8 Q Are the division of manufacturing costs versus  
 9 distribution costs the same for the MS-5500 and  
 10 MS-5700 that they are for the R-9500?  
 11 A Manufacturing costs and distribution costs?  
 12 Q No, the actual costs themselves, but there is no  
 13 distinction in the way the accounting is done as  
 14 between products?  
 15 A Right, the product, the accounting for items such as  
 16 standard cost and distribution costs are the same for  
 17 both SKUs.  
 18 Q Was it the same for Remington?  
 19 A Remington only had the one SKU that they sold.  
 20 Q And was the way Remington accounted for that SKU the  
 21 same as the way Rayovac accounts for that SKU?  
 22 A Remington did not track freight at a SKU level,  
 23 distribution out to the customers, so in general  
 24 Remington did not track the same level of granularity  
 25 on their SKUs as we track.

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1 Q And again the document that you provided last Friday  
 2 included all of the distribution costs, revenue,  
 3 manufacturing costs for the 5500 and 5700 as well?  
 4 A Yes, based upon our sales of that product, yes.  
 5 MR. UELAND: Before we start a new  
 6 document, can we take a quick break?  
 7 MS. WOLF: Sure.  
 8 MR. UELAND: It will be a quick  
 9 one. 11:47.  
 10 (A short recess is taken)  
 11 MR. UELAND: Thanks. Back on at  
 12 11:49.  
 13 Q Just to verify, that document, you provided that to  
 14 counsel – with the breakdown by month and quarter,  
 15 you provided that to counsel last Friday?  
 16 A Correct.  
 17 Q And you did that at the request of counsel?  
 18 A Correct.  
 19 Q And when did they ask you for that document?  
 20 MR. UELAND: I'm going to object  
 21 and instruct the witness not to answer on the  
 22 grounds of privilege. Don't answer that.  
 23 Q I'm going to show you what is now 31.  
 24 (Exhibit 31 is marked for identification)  
 25 Q What is this document?



1 A It appears to be a quote for tooling.  
2 Q And what is tooling?  
3 A Tooling our parts that are required to manufacture, to  
4 routinely manufacture the same part over and over  
5 again.  
6 Q But this is a cost -- is this a cost that Rayovac  
7 would bear or the manufacturer would bear?  
8 A Depends upon the negotiation.  
9 Q If it were a cost that Rayovac were bearing, would it  
10 be included in manufacturing costs?  
11 A Tooling depreciation could be included in the  
12 manufacturing cost. It's not always included in the  
13 manufacturing cost, but it could be included in  
14 manufacturing.  
15 Q How do you decide when it is and is not included in  
16 manufacturing cost?  
17 A It's somewhat subjective as to whether or not we build  
18 it into the standard cost of the product.  
19 Q And though it's somewhat subjective, what factors go  
20 into that decision?  
21 A The overall value of the tooling, the estimated life  
22 of the tooling and the impact of that cost in the  
23 SKU's overall cost, so definitely if it's immaterial,  
24 why bother.  
25 Q With regard to the manufacture of the cleaning center,

1 has Rayovac paid the tooling costs?  
2 A I don't know.  
3 Q Who would know?  
4 MR. UELAND: Can I just ask for  
5 clarification, when you say cleaning center, which  
6 one are you referring to?  
7 Q With regard to the cleaning center for the rotary,  
8 we'll start there.  
9 A Being the cleaning system for the rotary was produced  
10 before we bought the company, we would have to go back  
11 into archive records of Remington if they exist at  
12 that level, I can't fathom they do, to find where the  
13 tooling was paid for or how it was paid for.  
14 Q Is there an individual who would know whether or  
15 not --  
16 A There is not an expert, if you will, that came over  
17 from Remington. Their financial staff did not  
18 transfer to Rayovac.  
19 Q What about for the foil cleaning center?  
20 A The foil cleaning center we would have to check with  
21 our operations group of how they built the standard on  
22 that.  
23 Q Is there someone specific in the operations group?  
24 A Kristin Rider is the operations controller.  
25 Q And how about the cleaning center for the women's

1 shaver?  
2 A Same as the 5500.  
3 (Exhibit 32 is marked for identification)  
4 Q What is this document?  
5 A Which part of the document?  
6 Q The second page.  
7 A Appears to be a tooling quote.  
8 Q For which product?  
9 A The WDF-7000.  
10 Q Does this document give you any indication of how the  
11 cost was accounted for?  
12 A It does not.  
13 Q Do you know who manufactures the women's shaver?  
14 A I do not.  
15 Q What about the cleaning base for the women's shaver?  
16 A I do not.  
17 (Exhibit 33 is marked for identification)  
18 Q Take a minute and look at that document.  
19 (Witness examining document)  
20 Q What is this document?  
21 A I don't know.  
22 Q Have you ever seen it before?  
23 A I have not.  
24 Q In the lower left-hand corner it says REM, I assume  
25 month end forecast by MATL. What is MATL?

1 A I can speculate that REM MoEnd Fcst by material stands  
2 for Remington month end forecast by material, and the  
3 next characters I would guess, can speculate represent  
4 the date, April 5th -- wait a minute. I'm not sure  
5 what those characters represent because we haven't hit  
6 the year 2024 yet.  
7 Q When you say material --  
8 A MATL, material, yes.  
9 Q What type of material would that refer to?  
10 A That is a unique SKU within SAP.  
11 Q And that number is not used anywhere else?  
12 A What do you mean?  
13 Q Is it only within SAP?  
14 A I don't know what you mean by that.  
15 Q Does that number -- I guess the third column is also  
16 labeled MATL, and there is a series of numbers?  
17 A Correct.  
18 Q Are those numbers associated with the models listed  
19 just to the left of them?  
20 A Yes.  
21 Q Is that association only for purposes of SAP?  
22 A That association is for purposes of SAP and for other  
23 systems that utilize SAP data such as the data  
24 warehouse where I pulled the information from.  
25 Q That's something that's internal then to Rayovac?

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1 A The material number?  
 2 Q Yes.  
 3 A It's an internal thing to Rayovac, not to say that it  
 4 couldn't appear on a customer's order or invoice, so  
 5 it becomes an external thing.  
 6 Q But it's not like a SKU number that would show up on  
 7 the product itself?  
 8 A If it would show up on the product itself, it would be  
 9 in an inconspicuous way that a consumer wouldn't  
 10 notice it. It would be for internal identification  
 11 only if it were to show up at all.  
 12 Q The first column says PCTR. What does that mean?  
 13 A PCTR is an abbreviation for profit center.  
 14 Q And it seems there are a series of profit centers.  
 15 What is profit center 4110?  
 16 A Men's shaving.  
 17 Q And what about 4120?  
 18 A Women's shaving.  
 19 Q 4130?  
 20 A Grooming.  
 21 Q 4140?  
 22 A Accessories and spares.  
 23 Q That would include the cleaning fluid then?  
 24 A That's correct.  
 25 Q 4150?

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1 A Personal care.  
 2 Q 4160?  
 3 A I'm pretty certain that's other Remington,  
 4 miscellaneous Remington items that don't have a home  
 5 in the previous mentioned categories.  
 6 Q What kinds of things would that be?  
 7 A We have a clothes shaver, for example.  
 8 Q A clothes shaver?  
 9 A You know, to shave the lint fur balls off of your  
 10 clothes -- or not fur balls, but lint balls off of  
 11 your clothes, so it doesn't really have a fit in any  
 12 one of our shaving or grooming categories, so odds and  
 13 ends such as that, generally not a significant portion  
 14 of our business.  
 15 Q The next column after materials is total. Do you know  
 16 what that number -- what does that number reflect?  
 17 A I don't know. It's not labeled on this document what  
 18 the number reflects.  
 19 Q And you see it's faint on the photocopy, but there is  
 20 some writing on at least the first page?  
 21 A In various areas, yes, there is.  
 22 Q Do you happen to recognize any of that writing?  
 23 A Recognize it in the sense of can I read it to you?  
 24 Q Whose it might be.  
 25 A No idea.

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1 Q If this is a printout from the SAP system, do you know  
 2 why certain numbers are crossed out?  
 3 A I don't know that this is or is not a printout from  
 4 the SAP system and I don't know why anything would be  
 5 crossed off of it.  
 6 Q Is this grouping of profit center, is this a common  
 7 grouping at Rayovac?  
 8 A Yes.  
 9 Q Are you responsible for all of these profit centers  
 10 within the scope of your job?  
 11 A I work with all of these profit centers, yes.  
 12 Q Are there a lot of people who work with these, all of  
 13 these profit centers?  
 14 A I guess what do you mean by a lot of people?  
 15 Q What I'm trying to understand is what this document  
 16 is, so I'm trying to narrow the universe of who might  
 17 have made it and for what purpose it was made, what  
 18 these numbers reflect, so if there is something unique  
 19 about the group or the product categories that are  
 20 listed on it that would help us identify that, that  
 21 would be helpful.  
 22 MR. UELAND: So is there a question  
 23 pending right now?  
 24 Q Yes, the question was are there a lot of people who  
 25 would be concerned with this grouping of profit

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1 center.  
 2 A There are more people besides myself that span  
 3 multiple profit centers within our company.  
 4 Q Would you say that there are a hundred?  
 5 A No.  
 6 Q Fewer than a hundred?  
 7 A Yes.  
 8 Q Would you say that there are 50?  
 9 A Fewer than 50.  
 10 Q Would you say that there are 10?  
 11 A Probably more than 10.  
 12 Q Are there 20 approximately?  
 13 A Probably in the range. I mean in the different  
 14 functional areas around the organization, marketing is  
 15 the one place where you're unique by product line, but  
 16 it's not uncommon in other areas. I guess if you want  
 17 to throw our sales force into that, the number can  
 18 jump up over 20 in a heck of a hurry because currently  
 19 we charter our sales force to sell every single  
 20 product line, so to the degree these exist within  
 21 their customers, they're going to be concerned about  
 22 absolutely every product line. So to go back to the  
 23 number, it could be considerably more than 20  
 24 depending on your definition of who is involved and  
 25 what are they looking at.

1 Q Excluding the sales force momentarily, of those 20  
2 people, are there within that grouping people who  
3 frequently generate reports?

4 MR. UELAND: Objection, vague as to  
5 what you mean by frequently, objection as to what  
6 you mean by reports. I mean as the question  
7 stands, I think it's infirm.

8 Q That's fine. You can answer.

9 A People generate various ad hoc information on a  
10 regular basis, you know, as needed.

11 Q Do you generate reports like this?

12 A Like this one here? (Indicating)

13 Q Yes.

14 A No, I do not.

15 Q You indicated that forecasts generally come from an  
16 inventory group. Would they be included in the 20  
17 people that would be concerned with all of these  
18 profit centers and product categories?

19 A Yes, certain individuals down there would span all of  
20 the profit centers.

21 Q And who are those individuals?

22 A Sandy Kasdorff would probably be the best person. Her  
23 boss would be another, but she's the best.

24 (Discussion off the record)

25 Q And just looking at this list, as we go down it, would

1 you identify the products that refer to the cleaning  
2 center or that incorporate and are sold with the  
3 cleaning center.

4 A Okay. By material number, by model number or --

5 Q By model number probably.

6 A The MS-5500, I believe we have been speaking about  
7 that as well as the MS-5700 and the R-9500, the  
8 WDF-7000.

9 Q Just going back on the R-9500, there seem to be two of  
10 them listed. In material next to one there is an NS  
11 next to it. What does that designate?

12 A Most likely that stands for not salable. Within  
13 Rayovac as with creating the cardboard prepacks we  
14 spoke of earlier, over time we have found a need to  
15 have a SKU that might not be in a case, for example,  
16 or it's in a bulk pack configuration and so we have to  
17 have a separate identifier for that SKU so that all of  
18 a sudden it doesn't ship to a customer order, and so  
19 the NS would be added to the core SKU saying, hey,  
20 this is exactly the same SKU except for it's ready to  
21 be packaged into a tray pack or a secondary prepack.

22 Q What is a tray pack?

23 A Tray pack is along the lines of a cardboard prepack I  
24 was describing that you bump your cart into at  
25 Wal-Mart. The difference is a prepack is entirely

1 freestanding and truly are the ones that bring  
2 everybody all the pain down the aisles. Tray packs  
3 are generally utilized to merchandise an end cap on  
4 the retailer's shelving.

5 Q An end cap?

6 A When you go down the aisles in the stores, you  
7 generally are going perpendicular to the aisles, and  
8 on the end most retailers will merchandise products,  
9 generally featured products because, let's face it,  
10 it's prime real estate, so they will -- that's what we  
11 refer to as an end cap.

12 Q And do you ship those items, do you ship those tray  
13 packs whole? How do they arrive at a Wal-Mart?

14 A Yeah, fully loaded.

15 Q So all they have to do is take it out of a box and  
16 there is this huge display with the shavers already in  
17 it?

18 A Yes.

19 Q I'm sorry, we were going through the products. The  
20 WDF-7000 is the last one you had named.

21 A Yes, the WDF-7000 is correct. Going down to the  
22 accessories, CC-100, which I believe we spoke of  
23 earlier, there are three SPs that go along with it. I  
24 believe they are SP-21, and from memory I don't recall  
25 which of the SP-90s, but there are two of the SP-90s

1 as well.

2 Q When you say SP, what are those?

3 A SP stands for spare parts. Those would be foils and  
4 cutters. Those would be the types of products that  
5 would be resold and they're available at retail for a  
6 consumer to purchase replacement parts for their  
7 shaver.

8 Q So those four you said, the three SP -- two SP-90s and  
9 an SP-21, those are all spare foil and cutter parts?

10 A They are specifically referenced in the documents from  
11 last Friday.

12 Q So we have the monthly, quarterly and annual sales and  
13 profit information, all those?

14 A I'm not sure if you have monthly, but you would have  
15 quarterly and annual records.

16 Q And that includes costs and --

17 A Same level of detail as all of the others, financial  
18 information we have been speaking of.

19 MS. WOLF: I think it's probably a  
20 good point to break for lunch.

21 (A noon recess is taken)

22 (12:15 p.m. - 1:07 p.m.)

23 (Exhibit 34 is marked for identification)

24 Q What is this document?

25 A This document appears to be a listing of most of our

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1 men's shaver items describing various attributes about  
 2 the shavers.  
 3 Q There is a row called list price. What does that list  
 4 price reflect?  
 5 A That list price would generally be the price that the  
 6 trade would pay, the retailers would pay for the  
 7 product.  
 8 Q Now, you said generally the price that the trade would  
 9 pay. Why only generally?  
 10 A As you can appreciate, not every SKU is sold to every  
 11 customer at exact same invoice price in all cases due  
 12 to unique circumstances in negotiations.  
 13 Q Does anyone pay what's actually called the list price?  
 14 A Yes.  
 15 Q Who pays the list price in general?  
 16 A The rule of thumb is the majority of the customers pay  
 17 list price or very close to list price, so I can't  
 18 tell you if it's off a couple pennies, but it's not a  
 19 situation where there would be significant discounts.  
 20 Q And would any discounts from this list price be  
 21 reflected in the revenue and sales profits figures  
 22 that reflects actual pricing?  
 23 A That reflects actual pricing of the units as sold to  
 24 the customers?  
 25 Q Is there a listing somewhere of the prices that are

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1 charged to particular customers?  
 2 A For Remington SKUs?  
 3 Q Yes.  
 4 A No.  
 5 Q How then is it monitored?  
 6 A We have business analysts that work with sales teams  
 7 or groups of sales teams to work with a given set of  
 8 customers and their SKUs to ensure that they're  
 9 appropriately priced.  
 10 Q So taking as an example Target, how would Target go  
 11 about placing an order for, say, the 9500?  
 12 A Target would most likely submit an EDI order to us.  
 13 Q I'm sorry.  
 14 A Electronic data interchange that submit via computer.  
 15 Q And what would that order contain, they would request  
 16 a particular number of units?  
 17 A Generally, yes.  
 18 Q At a particular price?  
 19 A Most of our -- yes, most of our customers request a  
 20 price. I don't know if Target specifically requests  
 21 pricing with their orders, but I believe they do.  
 22 Q So the EDI would come in to who?  
 23 A SAP.  
 24 Q And then what would then happen once the order came in  
 25 to SAP?

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1 A SAP is set to automate the back office functions, if  
 2 you will. It will go into a cue until such time as  
 3 required that we actually ship product and then it  
 4 will come up for delivery, and at the DC they'll pull  
 5 the appropriate product and ship the product to Target  
 6 and after it's shipped it would be invoiced, basically  
 7 automated functions within any good business system.  
 8 Q Now, would a salesperson responsible for Target know  
 9 that an EDI had come in, would they be notified?  
 10 A I'm not aware of any formal notification each time an  
 11 EDI comes into our sales force.  
 12 Q And if the EDI comes in with a particular price on it,  
 13 is that price something that's already been negotiated  
 14 with the customer?  
 15 A Most times, yes.  
 16 Q And when it's not, what happens?  
 17 A When a customer requests a product from us with a  
 18 requested price, the system will price that item as  
 19 it's been configured to, you know, with the rules and  
 20 guidelines for whatever is in the system to price that  
 21 item for that particular customer. Should that match  
 22 the customer's requested price, it's a nonissue. The  
 23 order goes through its normal channels and is shipped  
 24 at the appropriate time and invoiced at the  
 25 appropriate time. Should, however, that item not have

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1 any price or that item in our system calculate out at  
 2 a different price than the customer's requested  
 3 purchase order, that order goes on a sales hold and  
 4 the customer service area contacts the appropriate  
 5 people to determine whose price is correct and why.  
 6 Q So someone puts pricing data into the SAP system?  
 7 A Correct.  
 8 Q And who does that?  
 9 A Customer service area, a section of our customer  
 10 service area is dedicated toward maintaining customer  
 11 master data, including their pricing.  
 12 Q So there is customer master data that indicates  
 13 pricing?  
 14 A Customer master data -- pricing is basically a part of  
 15 master data, yes.  
 16 Q And where does the information on pricing that's part  
 17 of customer master data come from?  
 18 A I don't know what you mean by where does it come from.  
 19 Q Who tells them what to input into the system for, say,  
 20 what Target's pricing is?  
 21 A The business analyst would provide direction on the  
 22 SKU level pricing.  
 23 Q And from the SAP system would there be a way to print  
 24 out a list of master data pricing?  
 25 A No.



1 Q No?

2 A You would think there would be, but no.

3 Q What about for an individual customer, is there a

4 list?

5 A Again the best way to validate pricing in SAP is to

6 literally go in and type a sample order for a

7 customer, put a quantity of one down and not save the

8 order and then you can see what the pricing comes up,

9 but there is not a utility within SAP that says I want

10 to know for the SKUs Target buys what is their invoice

11 price, press a button and out it comes, there is not a

12 facility in SAP to provide that.

13 Q Looking at this last column here, which is the R-9500,

14 it gives a list price of \$98.95. Does that look to be

15 an accurate price?

16 A That appears to be an accurate price of what we would

17 charge our customers for that product, yes.

18 Q Okay. You mentioned that there is a range based on

19 discounts. Does anyone pay more than the list price?

20 A On occasion at Remington products, yes.

21 Q And why would someone pay more than list price?

22 A Perhaps they had a large volume rebate program that is

23 if you want to do business with us, this is our model,

24 you will give us X prices and on those prices you'll

25 honor back end programs or bill trade rebate programs

1 of X percent. Then that might say in order for a SKU

2 to remain profitable, you need to price them at a

3 higher price on the invoice so that their overall net

4 price when they get their volume rebate or other

5 discounts is in line.

6 Q So the list price would be higher in actuality, they

7 would end up paying less than the list price?

8 A I'm sorry, I don't understand the question.

9 Q Sure. You said some people would pay more than list

10 price based on, if I understood you correctly, the

11 fact that at the end of the day they would be getting

12 some sort of rebate back?

13 A Most likely that would be a reason why someone would

14 have an invoice price higher than list.

15 Q And why would someone prefer to pay a higher list

16 price and receive a rebate rather than simply pay a

17 lower list price?

18 A Certain retailers have programs that are set up, they

19 tell us how they want the deal structured and their

20 programs say if you're doing business with me, I need

21 to have a 10 percent rebate for X, Y or Z. We're not

22 in the business to dictate how or why they use that

23 money necessarily, at times we are, but not generally,

24 so if that's the way they want to structure the

25 program, at the end of the day net sales is the same,

1 whether we give it to them off invoice or we give it

2 to them in a bill back, it still comes out of net

3 sales.

4 Q So everything is reflected at the end of the day in

5 terms of net sales?

6 A Um-hum.

7 Q Are there people who pay lower than list price?

8 A Yes.

9 Q What is the highest list price that you have seen that

10 Remington has charged for the 9500?

11 A From this sheet or just in general what's the highest

12 price we ever charged anyone?

13 Q The latter.

14 A I wouldn't have that information in my head. I mean I

15 could potentially go out and dig it up, but I don't

16 have that information.

17 Q And what about the lowest price?

18 A Again the same. I mean SKU level pricing at a

19 customer level is a pretty finite cut of data to have.

20 Q Would it be less than \$90?

21 A I honestly don't know.

22 Q I'm trying to get a sense of what the range is and the

23 variation off of list price.

24 A I understand that. In the documents conveyed last

25 Friday the invoice pricing is on there or the invoice

1 dollars are on there and the retail units are on there

2 as well as an average price.

3 Q Okay.

4 A But to identify unique circumstances where somebody is

5 on the high end of the scale or the low end of the

6 scale, I can't answer that.

7 Q But you did say \$98.95 appears to be a price that is

8 an accurate one?

9 A Yeah.

10 Q I guess traveling over to -- actually, it's not on

11 here. The pricing of the 5500, do you know what the

12 list price is for the 5500?

13 A I don't know the exact list price of the 5500.

14 Q Approximately?

15 A Approximately \$80.

16 Q And the 5700?

17 A Again I don't know the exact number. It's in the \$90

18 to \$100 range.

19 Q And the WDF-7000?

20 A I do not know a list price on the WDF-7000 off the top

21 of my head.

22 Q Approximate?

23 A My best estimate sitting here is \$60.

24 Q Do changes in pricing in terms of list pricing ever

25 take place?



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1 A You mean once an item is established?

2 Q Yes.

3 A Yes.

4 Q Which products have there been changes in pricing on

5 of the cleaning center products?

6 A To my knowledge, there has been no changes to the list

7 prices of the cleaning system products since their

8 introduction.

9 Q Though there haven't been any to the cleaning center

10 product list prices, generally why would a list price

11 on a product change?

12 A Could be a variety of different reasons why a list

13 price might change. It could be a situation where the

14 initial one was set incorrectly, could be a situation

15 where we're transitioning to a new SKU, so to ensure

16 we continue to move through the old product, you might

17 offer a lower price on it while you're transitioning

18 through, could be any number of reasons.

19 Q You said the list price is something that's set. Who

20 sets the list price?

21 A That would be a Sean Martin type function, marketing

22 management.

23 Q And what goes into that pricing decision?

24 A What goes into that pricing decision is understanding

25 the product that we are offering, the features and

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1 benefits that it contains, how it will fit into the

2 retail price points at retail amongst the other SKUs

3 that are offered for sale at retail and then from

4 there we look at a retailer's margin, what it would

5 reasonably be expected to be to back into what our

6 invoice price would need to be in order to sell that

7 product and have it fit in the trade appropriately.

8 Q Does Rayovac have a set idea of what profit it would

9 like to make?

10 A We do not have a set idea or a set number. If someone

11 were to say black and white what is your number for

12 profitability in men's shaving, there is not a uniform

13 answer that you will get.

14 Q On the cleaning center products, if you know, is there

15 a set number of profitability?

16 A No.

17 Q Is there an approximate level of profitability?

18 A No, again, going back to the model of our pricing, the

19 features and benefits that are available, and

20 obviously making sure you're making money at the end

21 of the day.

22 Q If you were to approximate the level of profit, what

23 would you place it at?

24 A Customer contribution was on the sheets we shared the

25 other day. Approximate value on the cleaning system

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1 upper thirties, upper 30 percent.

2 Q And is that consistent with other men's shaving

3 products?

4 A It's consistent with some other men's shaving

5 products, although in others it's not.

6 Q Which ones is it consistent with?

7 A Our other rotaries, it's more consistent with our

8 other rotary offerings.

9 Q And it's not consistent with the foil?

10 A Correct.

11 Q Is the profit on foil generally higher or lower?

12 A Generally higher.

13 Q Why is the profit level lower with the cleaning center

14 foils?

15 A Our cleaning system, there is a tremendous amount of

16 features included in the product, what can I say, a

17 pop-up foil, rubber fins to lift the hairs, obviously

18 the cleaning system itself adds a tremendous cost into

19 it, and so at the end of the day it's a collection of

20 features and benefits that consumers are willing to

21 pay for, that will bear this price out in the

22 marketplace. Unfortunately, our cost as a percent of

23 that and the foil system cleaning shavers is more than

24 what the consumer price will carry on non-cleaning

25 systems relative to our cost.

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1 Q How do you determine what the consumer price will

2 carry?

3 A That's back to what we had just discussed about

4 analyzing what SKUs are in the marketplace.

5 Q And when you say what SKUs are in the marketplace, are

6 those Remington or Rayovac's own SKUs or competitor

7 products?

8 A Both.

9 Q So you look at the prices of competitor products in

10 setting pricing?

11 A Yes, as any good business would launch a product, you

12 need to know what you're selling against if you wish

13 to be successful, so not only do we have to look at

14 what our own offerings are and price according to

15 that, we need to look at what the competition is

16 offering.

17 (Exhibit 35 is marked for identification)

18 Q Actually, I would like you to compare it with

19 Exhibit 25 just for a minute.

20 A Is there anything specific you would like me to

21 compare?

22 Q They're both labeled the Men's Shaving Marketing Plan

23 from September 2004, but they're actually different

24 documents. Do you know why are there multiple

25 versions of this same document?

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1 A It's quite possible one version of this document would  
2 be used from a marketing management standpoint and  
3 used to present to the senior marketing management  
4 while the other document could have been used to  
5 present to the sales force.

6 Q And does one of these look more like a senior  
7 management type of document?

8 A Obviously the thinner one would say to you more senior  
9 management. However, that may not be the case  
10 depending upon what level of detail they wanted to go  
11 into with senior management versus what level of  
12 detail they would want to show to the sales force, so  
13 it would take -- I could evaluate the two and try --

14 Q But the sales force often would have access to more  
15 information than a senior management presentation?

16 A Not necessarily, no.

17 Q Do you know why they would be called the same thing  
18 rather than designated something different?

19 A No. I mean that would be up to whoever wrote the  
20 title on the slide.

21 Q Looking at what we just marked as Exhibit 35, if you  
22 could take a look at pages 8 and 9.

23 (Witness examining document)

24 A Okay.

25 Q Starting with page 8, could you explain what that

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1 heading at the top of the page means.

2 A "Deflationary category pricing driven by Braun and  
3 Norelco, Remington average retail up 9.5 percent,"  
4 within our retailer mind categories growth is key, so  
5 we do our best to focus on initiatives that can drive  
6 category growth, and so consequently looking at  
7 average retail price per unit and seeing that our  
8 average retail price per unit is going up while  
9 competitors are going down and the category is going  
10 down is a good tool for us to take to the trade.

11 Q So it's good for Remington that its prices are going  
12 up while others are going down?

13 A In the spirit of driving category growth, it's a good  
14 thing to have the average price going up.

15 Q But presumably it's not good for your competitors?

16 A What's not good for our competitors?

17 Q The deflationary category pricing.

18 A Correct, if the deflationary -- if the retails are  
19 going down, that means they're trading consumers down  
20 to a lower cost unit for whatever reason, which makes  
21 it all the more difficult to grow category sales.

22 Q Is deflationary category pricing sometimes referred to  
23 as price erosion?

24 A I guess it could be, although I would view them as two  
25 different things because price erosion to me says it's

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1 on an existing SKU per se. When I hear the two, when  
2 I hear price erosion, I sort of assimilate it with  
3 just the same SKU has gone down in price, where I hear  
4 deflationary category pricing, it says to me it's a  
5 family of SKUs.

6 Q So men's shaving or cleaning products would refer to  
7 deflationary category pricing --

8 A Right.

9 Q -- versus the 9500 would have price erosion?

10 A Yes, as I look at it I would say those terms are more  
11 appropriately aligned.

12 Q The concept is similar?

13 A The concept is similar, but not always, again because  
14 price erosion could be a situation, for example, as we  
15 spoke about earlier, should we transition from an  
16 existing SKU to a new SKU and in the process give a  
17 discount that the retailer passes to the consumer,  
18 that will show up as price erosion. That's not  
19 necessarily -- it's not necessarily one and the same  
20 with deflationary category where we would introduce an  
21 entirely new line or entirely new set of shavers at  
22 the OPP level, for example. That would be category  
23 deflation.

24 Q And what would cause, other than I think you just  
25 mentioned the introduction of new entry level

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1 products, deflationary category pricing?

2 A Shifts in consumer choices to less valuable offerings  
3 would be one thing that would offer it, would change  
4 it, introductions of new competitive SKUs, like OPP  
5 type SKUs would certainly drive it there.

6 Q You said new competitor SKUs. Would that be both  
7 Remington or Rayovac's own and new competitors  
8 entering the marketplace outside the companies?

9 A All of the above, basically everything from Remington  
10 to Norelco to Braun to some of the knock-offs we have  
11 seen in the market this last holiday season that were  
12 very much OPP driven SKUs, those will deflate the  
13 category. Whether we offer it, Braun offers it or  
14 Norelco offers it or an unnamed competitor brings it  
15 to the category, if it gets traction in consumer  
16 take-away and it's at a lower price point, which is  
17 basically what this chart is all about, average price  
18 point, it's just going to bring the average down.

19 Q You mentioned knock-offs in the market last holiday  
20 season. What were you referring to?

21 A There is a product called ShaveMan and Titanium Turbo.

22 Q And what is the ShaveMan?

23 A The ShaveMan is a mini travel shaver battery operated  
24 at a very, very low retail price point.

25 Q What is that low?